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MINIMUM PRICE REGULATION UNDER CODES OF FAIR COMPETITION

By

Saul Nelson

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TRADE PRACTICE STUDIES SECTION
March, 1936.

OFFICE OF NATIONAL RECOVERY ADMINISTRATION

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FOREWORD

This study of Minimum Price Regulation under Codes of Fair Competition was planned and begun by Mr. M. D. Kossoris of the Trade Practice Studies Section. Mr. Kossoris resigned from the Division of Review in January, 1936. The study was completed and this report prepared by Mr. Saul Nelson of the Trade Practice Studies Section, Mr. Corwin D. Edwards in charge. In the compilation of the material for the report, assistance was received from Mr. Constant Southworth, Miss Genevieve Gehres, Mr. J. R. Herrick, Mr. F. J. Nagle, and Mr. C. A. Simmes.

The widespread desire of code proponents to raise or stabilize the price structures of their respective industries resulted in the inclusion in the majority of approved codes of provisions designed to limit price competition directly. In general, these devices fall into three categories:

(1) In a few cases direct grants of power to the code authorities, usually subject to NRA approval, to prescribe minimum price schedules.

(2) Provisions permitting the establishment of minimum price schedules for specified products and for limited periods during emergencies declared by NRA.

(3) Provisions prohibiting sales below cost. These were usually based on individual cost, but in a few cases some such concept as average, reasonable, or representative cost was the criterion.

Provisions of this nature, although included in the majority of codes, actually became effective in a relatively small proportion of these cases because NRA did not approve the price schedules or cost systems necessary to effectuate them. Nevertheless, minimum price controls were applied to codes covering a substantial and representative section of American Industry.

This study is concerned with an appraisal of the extent to which these devices succeeded in solving the immediate problems at which they were directed. Although the wide social and economic implications of any such interference with the price mechanism are of extreme importance, such considerations have been excluded as being beyond the scope of this study.

Because of the limitations of time and personnel, the investigation was confined to twenty-eight industries in which minimum price regulation was attempted - industries selected as representative of various parts of the industrial structure, of the economic problems encountered, and of the types of minimum price devices.

For each industry it was sought to determine, first, the basic difficulties which contributed to the dislocation of the price structure; second, the considerations underlying the formulation of the provision designed to attack these problems through the establishment of minimum prices; and, third, the actual effect of the application of these controls.

In some of these cases the attempts to limit price competition resulted in complete failure; in others they had a greater or lesser effect upon the industry concerned. The character and extent of this effect was not entirely fortuitous, but was definitely related to the character of the industries involved and the nature of the underlying problems.

The validity of the conclusions reached is, of course, conditioned both by the limitations of the sample of industries covered and by the impossibility of completing comprehensive surveys even in these cases. None the less, it is believed that they are indicative of the general character of experience with minimum price provisions.

At the back of this report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall
March 9, 1936 Director, Division of Review

TABLE OF CONTENTS

PAGES

Summary of Findings..... x-xiii

CHAPTER I.

THE PROBLEM..... 1

I. STATEMENT OF THE PROBLEM..... 1

II. REASONS FOR THE STUDY..... 1

III. METHOD OF APPROACH..... 2

A. Natural Resource Industries..... 2

B. Manufacturing Industries..... 2

1. Producers goods and services..... 2
2. Consumers goods manufacturing industries..... 3

C. Consumers Service Trades..... 3

D. Distribution Trades..... 3

1. Retail Distribution Trades..... 3
2. Wholesale Distribution Trades..... 3

IV. PLAN OF THE REPORT..... 4

CHAPTER II.

The Economic Background:

I. IMMEDIATE CAUSES OF DISCONTENT..... 6

II. THEORETICAL BACKGROUND..... 8

A. Existence of Fundamental Economic Dislocations..... 8

B. The Theory of Free Competition..... 9

1. Determination of Market Price..... 9
2. The Concept of a "Normal" Price
Relation between Price and Cost..... 10
3. The Principle of Automatic Adjustments..... 10
4. The Function of the Free Price Mechanism..... 10

C. The Problem of Imperfect Competition..... 11

1. Failure of Automatic Mechanism to Function Properly..... 11
2. Monopolistic Prices..... 11
3. Effect of Size..... 11
4. Necessity of Planning Production..... 11
5. Inequality of Producers -
Consumer Preference..... 12

6. Unequal Price Decline During Depression..... 12
7. Intrusion of Other Rigid Elements..... 12
8. Failure of Prices to Adjust Themselves to Cost of Production..... 13
9. Failure of Laissez Faire Policy..... 13
10. Similarity of Conditions in Canada..... 14

CHAPTER III.

THE DEMAND FOR PRICE REGULATION AND ITS PART IN THE FORMULATION OF THE NATIONAL INDUSTRIAL RECOVERY ACT

1. BUSINESS SEEKS A WAY OUT..... 16

CHAPTER IV.

PRICE CONTROL DEVICES -
DEVELOPMENT OF NRA POLICY

I. NRA ACCEDES TO THE PRINCIPLE OF PRICE CONTROL..... 22

II. PRICE CONTROL DEVICES USED - DEVELOPMENT OF POLICY..... 24

A. Classification of Devices..... 24

B. Cost Protection..... 24

1. Popularity and nature of the device..... 24
2. Cost protection implemented by cost accounting systems..... 25

C. Direct Minimum Price Fixing..... 26

D. Emergency Price Regulation..... 27

III. OTHER PRICE CONTROL DEVICES..... 29

CHAPTER V.

PROBLEMS CONFRONTING INDIVIDUAL INDUSTRIES:

I. PROBLEMS AS RELATED TO INDUSTRY GROUPS..... 32

II. PROBLEMS CONFRONTING INDUSTRY GROUPS..... 32

A. Natural Resource Industries..... 33

B. Consumers Service Trades..... 33

C. Manufacturing Industries..... 34

1. Industries manufacturing producers goods or performing services for producers..... 34

Page

a. Industries producing goods for which there is no independent demand..... 34

b. Industries performing services for producers..... 34

c. Other producers goods industries..... 35

2. Industries manufacturing consumers goods..... 36

D. Distributing Trades..... 36

1. Retail distributing trades..... 36

2. Wholesale Distributing Trades..... 37

III. PATTERN OF PROBLEMS ENCOUNTERED..... 37

Chart - Pattern of Industry Problems..... 38

A. Excess Capacity and High Overhead..... 39

B. Difficulty of Increasing Sales Through Price Concessions... 39

C. Loss of Market to Substitute Products..... 40

D. Fluctuations of Raw Material Prices..... 41

IV. PROBLEMS ARISING FROM THE CHARACTER OF INDUSTRY MEMBERSHIP... 41

A. Ease of Entry..... 41

B. Lack of Cost Consciousness..... 42

C. Factional Problems..... 43

D. Price Wars..... 44

V. PROBLEMS ARISING FROM DISTRIBUTIVE RELATIONS..... 44

A. Competing Channels of Distribution - Mail Order Houses..... 44

B. Other Distributive Problems..... 45

VI. PROBLEMS ARISING FROM CONSUMER PRESSURE..... 45

A. Bid Peddling..... 45

B. Price Dictation..... 46

VII. ATTEMPTS AT CONTROL THROUGH COMBINATION OR COERCION..... 46

VIII. PRICE THE COMMON DENOMINATOR..... 46

CHAPTER VI.

PRICE REGULATION THROUGH DIRECT INDUSTRY PRICE FIXING:..... 47

I. NATURE OF THE DEVICE..... 47

II. EXTENT OF ITS APPLICATION..... 47

III. LUMBER AND TIMBER PRODUCTS INDUSTRY..... 48

IV. THE CONSUMERS' SERVICE TRADES..... 57

V. WOOD CASED LEAD PENCIL INDUSTRY..... 60

VI. CONCLUSIONS..... 63

A. Implications of the Device..... 63

B. Administrability..... 64

C. Success of the Device as Related to the Problems Existing..... 64

1. Lumber and Timber Products Industry..... 64

2. The Cleaning and Dyeing Trade..... 65

3. Wood Cased Lead Pencil Industry..... 66

D. Summary..... 66

CHAPTER VII.

PRICE REGULATION THROUGH EMERGENCY DECLARATION:

I. NATURE OF THE DEVICE..... 67

II. EXTENT OF APPLICATION..... 67

III. AGRICULTURAL INSECTICIDE AND FUNGICIDE ACT..... 68

IV. CAST IRON SOIL PIPE ACT..... 72

V. FUR DRESSING & DYEING TRADE..... 76

VI. WASTE PAPER TRADE..... 78

VII. ICE INDUSTRY..... 84

VIII. RETAIL RUBBER TIRE AND BATTERY TRADE..... 87

IX. WHOLESALE AND RETAIL TOBACCO TRADES..... 92

X. IMPLICATIONS OF THE EMERGENCY DEVICE..... 98

XI. EFFECTIVENESS OF DEVICE..... 99

CHAPTER VIII.

PRICE CONTROL THROUGH COST PROTECTION:

I. THE DEVICE - EXTENT AND IMPLICATIONS.....101

A. Nature and Implications of the Device.....101

B. Frequency of Cost Protection Provisions in Codes.....102

C. Cost Accounting Systems.....103

II. THE INDUSTRIES STUDIED.....108

III. CODES IN WHICH COST PROTECTION WAS NEVER SERIOUSLY INVOKED.109

A. Asphalt Shingle and Roofing Industry.....109

B. Furniture Manufacturing Industry.....110

C. Rubber Tire Mfg. Industry.....113

D. Causes for non-application of Cost Provision.....114

IV. CODES IN WHICH COST PROTECTION FAILED COMPLETELY.....114

A. Hardwood Distillation Industry.....115

B. Canvas Goods Industry.....115

C. Throwing Industry.....117

D. Plumbing Fixtures Industry.....120

E. Causes of Failure.....123

V. CODES IN WHICH COST PROTECTION WAS EFFECTIVE TO A GREATER OR LESSER DEGREE.....126

A. Limestone Industry.....126

B. Malleable Iron Industry.....131

C. Screw Machine Products Mfg. Industry.....136

D. Paint, Varnish and Lacquer Mfg. Industry.....140

E. Fertilizer Industry.....145

F. Fire Extinguisher Appliances Industry.....147

G. Graphic Arts Industry - Commercial Relief Printing....153

H. Coffee Industry....163

I. Luggage and Fancy Leather Goods Industry....170

J. Paper Distributing Trade....174

VI. SUMMARY....181

CHAPTER IV.

CONCLUSIONS

I. PURPOSE OF MINIMUM PRICE REGULATION....184

II. EFFECTIVENESS OF MINIMUM PRICE REGULATION....184

A. Factors Making for Failure....184

B. Cases of Relative Success....186

III. COMPARISON OF DEVICES

A. Basic Similarities....189

B. Differences....190

IV. SUMMARY....191

APPENDIX I.

METHODS OF INVESTIGATION....192

APPENDIX II.

PROBLEMS FACED BY SPECIFIC INDUSTRIES....194

I. PURPOSE....194

II. LUMBER AND TIMBER PRODUCTS INDUSTRY....194

III. CLEANING AND DYEING TRADE....196

IV. CAST IRON SOIL PIPE....197

V. LIMESTONE INDUSTRY....199

VI. MALLEABLE IRON INDUSTRY....199

VII. WASTE PAPER TRADE....202

VIII. THE SCREW MACHINE PRODUCTS INDUSTRY....203

IX. FUR DRESSING AND DYEING INDUSTRY....204

X. THROWING INDUSTRY....206

Page

XI. AGRICULTURAL INSECTICIDE AND FUNGICIDE INDUSTRY.....208

XII. FERTILIZER INDUSTRY.....209

XIII. ASPHALT SHINGLE AND ROOFING INDUSTRY.....210

XIV. FIRE EXTINGUISHING APPLIANCES MANUFACTURING INDUSTRY.....212

XV. HARDWOOD DISTILLATION INDUSTRY.....213

XVI. PLUMBING FIXTURES INDUSTRY.....214

XVII. COMMERCIAL RELIEF PRINTING.....214

XVIII. WOOD CASED LEAD PENCIL INDUSTRY.....217

XIX. COFFEE INDUSTRY.....219

XX. CANVAS GOODS INDUSTRY.....220

XXI. FURNITURE MANUFACTURING.....221

XXII. LUGGAGE AND FANCY LEATHER GOODS INDUSTRY.....222

XXIII. PAINT, VARNISH AND LACQUER INDUSTRY.....223

XXIV. ICE INDUSTRY.....223

XXV. RETAIL RUBBER TIRE AND BATTERY TRADE.....225

XXVI. RUBBER TIRE MANUFACTURING INDUSTRY.....227

XXVII. RETAIL TOBACCO TRADE.....228

XXVIII. WHOLESALE TOBACCO TRADE.....229

XXIX. PAPER DISTRIBUTING TRADE.....229

APPENDIX III.

CODES IN WHICH MANDATORY COST ACCOUNTING SYSTEMS OR COST ACCOUNTING RULES WERE APPROVED.....232

SUMMARY

The aim of this study was to examine the actual operation of the devices used for the regulation of minimum prices under NRA and to determine the extent to which these devices effectively coped with the problems they were designed to solve.

Prior to NRA there had been no extensive experience in the United States with the regulation of industrial prices. Investigation and appraisal of NRA experience in this field may provide a basis for a sounder understanding of the questions involved in any future action in this direction than existed during the period of code formulation and administration.

Minimum price regulation under the codes was undertaken upon the plea of business men as an attempted solution of the difficulties which confronted them during the period immediately preceding NRA. Production and prices had decreased with extreme severity between 1929 and 1932. In practically every industry there was a tremendous excess of producing facilities over effective demand. Overhead charges had to be met, and the temptation to increase sales by cutting prices was great. As a result there was apparently no end in sight to the decline in prices.

To some extent these conditions may be traced to a fundamental change in the character of the market. The continuous increase in the size of producing units and the consequent shift from free competition and free prices to imperfect competition and managed prices had introduced rigid elements which impeded the proper functioning of the price mechanism.

Minimum price regulation represented an attempt to strike, not at these underlying problems, but rather at their superficial manifestation. Business men contended that the elimination of selling below cost was a necessary step in the rehabilitation of industry. The cooperation of industry with NRA was in large part predicated on the belief that under its aegis, this aim could be achieved.

The National Industrial Recovery Act as passed contained no provision specifically authorizing the establishment of minimum prices. From the debates in Congress preceding its enactment, however, it appears that this power was considered implicit in the right to approve codes of fair competition. Immediately after the approval of the Act it became apparent that there was a conflict between its major purpose, to increase national purchasing power, and the desire of industry to raise prices. The latter, if achieved, might in large part cancel the benefits anticipated from the former. The success of the efforts of the Administration to raise the prices of farm products relatively to industrial products might also be imperilled. The President specifically cautioned against raising prices as fast and as far as wages.

Nevertheless, under the pressure of industry NRA acceded to the plea for the right to establish minimum prices. The proposals submitted to NRA frequently went much further and aimed not only at limiting but at eliminating price competition. These ambitious schemes were greatly modified prior to approval, but the principle of price control was retained, and the vast majority of approved codes contained provisions permitting the establishment of minimum prices.

These provisions may be divided into three major groups:

1. Permitting direct minimum price fixing by the Code Authority, usually subject to approval by NRA

2. Permitting fixing of minimum prices during emergencies only.

3. Prohibiting sales below cost.

Of these the last was far the most commonly used. During the major part of the period of code formulation it was sanctioned by policy, and was usually suggested by NRA officials as a substitute for more drastic proposals of industry. Direct minimum price fixing was approved only in cases considered exceptional, and its use was in large part confined to three groups of industries: transportation, natural resources and service.

During the first half of 1934 NRA policy gradually veered away from devices of this nature, and on June 7, 1934, Office Memorandum No. 228 definitely ruled against minimum price control except in emergencies. However, the prohibition of loss leaders through provisions forbidding sales below invoice cost plus markups continued to be approved policy.

Provisions for price or bid filing, restrictions on terms of sale, customer classification, etc., played an important part in supplementing or facilitating enforcement of these direct controls.

The extent to which prices were affected in specific industries by the depression was determined largely by the following factors:

1. The nature of the industry's markets or raw material sources.

2. The character of its membership.

3. The channels used for distributing its products.

4. The pressure consumers were able to exercise on its price structure.

Code experience with minimum price regulation has been analyzed for 28 codes. In three of these the device used was direct minimum price fixing, in eight declaration of emergency, and in 17 cost protection.

In certain of these 28 industries the experiment completely failed to solve the problems at which it was directed; in others a greater or less degree of success was achieved. The criterion of success used here

is merely effectiveness in achieving the aims sought by industry and implies no judgment as to general social or economic desirability.

On the basis of this limited sample the following conclusions appear to be valid:

1. Where substitutes for an industry's products were readily available, and where as a result consumption of these products was closely related to their price, failure usually followed.

2. Where minimum price control was directed by one faction of an industry against another in an effort to limit the activities of the latter and met with active resistance from the group it was designed to restrain, the attempt was usually unsuccessful.

3. Where an industry comprised a multiplicity of units producing a wide variety of unstandardized products, price control usually failed at the point of administration.

4. Where the purpose was to enable an industry better to resist the pressure of powerful consumers the result depended to a large degree upon the willingness of consuming interests to submit to restriction and upon the cohesiveness of the industry.

5. Minimum price regulation appears to have been reasonably successful in arresting two price wars which were, according to the available evidence, deliberately started by one or two industry members.

6. Minimum price control was apparently successful in coping with the problem of loss leader selling in the Retail Tobacco Trade.

7. In one case it is probable that the operation of the cost provision somewhat improved the position of small units in an industry, though the evidence is largely inferential.

8. In one area of one industry the breathing spell accorded by price regulation permitted industry members to introduce a scheme for the regulation of production which seems to have improved their status materially.

9. In two industries, confronted by no very serious problems other than the general effect of the depression, price regulation resulted in a substantial increase in prices. In both of these cases prices declined appreciably after the removal of these restrictions.

So far as the three forms of price regulation are concerned, their relative results may be summarized as follows:

(1) Direct minimum price fixing appears to have been the most unsatisfactory from an administrative point of view. The grant of power to the code authorities was in most cases too broad to permit NRA to exercise an adequate degree of supervision.

(2) Cost protection, although in most cases theoretically based on individual cost, in actual practice established price floors no less surely than direct or emergency price fixing. The administration of these provisions resulted in constant conflict between NRA and the Code Authorities. On the whole, this device had little to recommend it as an administrative instrument.

(3) The most satisfactory in actual operation was the declaration of emergency. One important advantage was that it enabled NRA to exercise a maximum degree of control both the establishment of prices and their administration.
The time limitation with requirement of automatic review prior to extension was a safeguard against abuse.

This report is confined to an appraisal of the efficacy of the various minimum price devices in remedying the specific situations they were designed to meet. No attempt has been made to weigh minimum price regulation in relation to general social and economic policy.

CHAPTER I

THE PROBLEM

I. STATEMENT OF THE PROBLEM

The purpose of the present study is to analyze and evaluate the minimum price controls attempted under the codes as solutions of the problems to which they were addressed.

II. REASONS FOR THE STUDY

Had N.R.A. been able to base its policy and practice with reference to minimum price regulation on an adequate background of previous experience of a similar nature, it is probable that many serious difficulties and controversies would have been avoided, and many steps, later retraced, would never have been taken.

The regulation of industrial prices under N.R.A. was undertaken upon the plea of business, in an attempt to solve some of the problems created or made acute by the depression. Frankly experimental in nature, the various codal devices to limit price competition were in practically all cases and at all times the subject of violent controversy. Many of the bitterest attacks launched against N.R.A. found a specific target in price regulation. The difficulties encountered in the operation of these controls were manifold; in fact the problem was perhaps the most contentious with which N.R.A. had to cope.

The only experience in the United States at all similar in nature was a brief experiment during the World War. With a few minor exceptions, such as the attempt of the Federal Farm Board to peg the prices of certain farm products (the regulation of natural monopolies obviously belongs in a different category), the efforts of the Federal Government had been directed toward maintaining, rather than toward limiting price competition. The law had specifically forbidden industry to combine for the purpose of fixing prices. Experiments recorded in history represented no parallel to current conditions. Modern foreign experience with such devices as the cartel, although extensive, was inapplicable because predicated upon an alien political and economic philosophy.(*)

But if price control under N.R.A. represented a venture into almost completely uncharted seas, the log of that venture is now, at least in part, available. Approximately 80% of all approved codes contained some provision designed to set a floor for prices. While the majority of these remained inoperative, for reasons which will be discussed later, actual experience covered an extensive and representative section of American industry. Various means of regulation were attempted, differing both in principle and in detail; and the results of their application to individual industries varied widely.

All these devices lapsed with the Schechter decision. At present the rising industrial tempo has subdued, though by no means entirely

(*) For a discussion of all these efforts at price control, see Appendix III.

eliminated, the cry of industry for price regulation. It is probable that another downtrend in the business cycle would again stimulate the plea that prices be "stabilized."

A critical analysis of the record now available may serve to provide a sounder basis for future action than was available in 1933, if and when the possibility of governmental control of industrial prices are again seriously considered. Such an analysis may reveal the extent to which the devices used under the codes ameliorated the specific dislocations they were designed to remedy.

III. METHOD OF APPROACH

It was toward providing such an analysis and appraisal that this study was directed. The method pursued in its actual conduct is explained in detail in Appendix I, and will be stated here only briefly.

It became apparent at an early stage that limitations as to time, personnel and money precluded an analysis of all the codes (approximately 80) under which minimum price provisions were operative. The investigation was therefore concentrated on a representative sample comprising 38 codes. Every effort was made to insure that this selection would comprise a variety of industries, problems, devices and results.

A list of classification of these codes follows:

A. Natural Resource Industries

Lumber and Timber Products

B. Manufacturing Industries

1. Producers goods and services:
   (a) those industries producing goods or performing services for which there is no independent demand and which are consequently unable to increase their volume by lowering prices:

      (i) those producing goods:
      Cast Iron Soil Pipe Industry
      Limestone Industry
      Malleable Iron Industry
      Screw Machine Products Industry

      (ii) those performing services:
      Fur Dressing and Fur Dyeing Trade
      Throwing Industry
      Waste Paper Industry

   (b) those industries which are able to increase demand for their products to greater or lesser extent by lowering prices:

      Agricultural Insecticide and Fungicide Industry

Fertilizer Industry
Asphalt Shingle Industry
Paint, Varnish and Lacquer Industry
Fire Extinguishing Appliances Mfg. Industry
Plumbing Fixtures Industry
Hardwood Distillation Industry
Rubber Tire Manufacturing Industry
Graphic Arts Industry
(Commercial Relief Printing Division)

2. Consumers Goods Manufacturing Industries:

(a) those industries where the product demand is relatively inelastic:

Coffee Industry
Wood Cased Lead Pencil Industry

(b) those industries demand for whose products is more elastic:

Furniture Industry
Luggage and Fancy Leather Goods Industry
Canvas Goods Industry
Ice Industry

C. Consumers Service Trades

Cleaning and Dyeing Trade

(Illustrations will also be drawn from the Laundry Trade, Shoe Rebuilding Trade, Barber Shop Trade and Hotel Industry.)

D. Distribution Trades

1. Retail Distribution Trades:

Retail Tire Trade
Retail Tobacco Trade

2. Wholesale Distribution Trades:

Paper Distributing Trade
Wholesale Tobacco Trade

There were three major codal devices for minimum price control, all of which are represented in the selected sample. These are:

(1) Direct minimum price fixing by Code Authority or similar agency, with or without approval of N.R.A.;
(2) Price control during declared emergencies only;
(3) Prohibition of selling below cost, including
(a) Individual cost
(b) Some form of "average" or "representative" cost applicable to an entire industry.

Pertinent information was gleaned from the following sources:

(1) N.R.A. files and studies.
(2) Other Government departments.
(3) Publications and similar non-governmental sources.
(4) Field investigations (in a few cases).

For each codified industry studied, it was sought to determine:

(1) The nature of the underlying difficulties motivating the plea for price control.
(2) The manner in which a specific price control device was formulated in the attempt to solve these difficulties.
(3) The actual experience in administering the device.
(4) The effectiveness of the device in meeting these difficulties.
(5) The broader effects of its application.

IV. PLAN OF THE REPORT

In presenting the results of the study, the problem resolves itself into the following phases, which have been treated in this report in the order named:

A. An analysis of the conditions leading to industry's plea for the limitation of price competition under the codes, including:

(1) A brief survey of the general price problems confronting industry in the spring and summer of 1933.
(2) An analysis of the basic economic dislocations operating to prevent the satisfactory operation of the free price mechanism.

B. A summary of the manner in which the dissatisfaction of industry crystallized into a plea for the limitation of price competition, and of the consideration given this plea in the formulation of the N.I.R.A.

C. A brief discussion of the devices actually used under N.R.A. to limit price competition, and of the development of N.R.A. policy in connection therewith.

D. An examination of the symptoms by which these basic economic dislocations manifested themselves in specific industries, constituting the immediate problems price control was designed to remedy. As far as possible similarity of group pattern has been stressed.

E. An analysis of the actual experience of each industry with codal minimum price provisions and of the effect of the lapse of such provisions, This analysis will be grouped according to the devices used:

(1) Direct minimum price fixing.
(2) Emergency prices.
(3) Cost protection.

F. Conclusions based on the foregoing directed toward the problem of the study as set forth in the first paragraph of this chapter.

G. There are also included as appendices:

(1) Methodology.
(2) Detailed studies of the problems confronting the industries selected.
(3) General survey of other attempts at price regulation.

CHAPTER II

THE ECONOMIC BACKGROUND

I. IMMEDIATE CAUSES OF DISCONTENT

The eagerness with which the representatives of industry sought the aid of NRA to raise and maintain the price levels of their products or services was one of the most striking phenomena of the early period of intensive code formulation. It may be said with a reasonable degree of assurance that the hope of assistance toward the stabilization of the price level was the primary inducement for the submission of a code in the great majority of instances, certainly after the first wave of enthusiasm had waned. Code formulation was frequently on a trading basis; that is, so much in the way of concessions to labor was offered in return for so much in the way of price stabilization.

Obviously the great majority of industries were dissatisfied with the price levels prevailing as a result of that degree of free play of economic forces which then existed. This dissatisfaction was expressed in a well-nigh unanimous effort to secure the approval of provisions which it was hoped would raise prices to a higher and more uniform level. In part, of course, these efforts may be explained by the old observation:

> "People of the same trade seldom meet together even for merriment and diversion, but the conversation ends in a conspiracy against the public or in some contrivance to raise prices." (*)

Taken alone, however, this explanation would be too facile. It was believed by an increasing number of people that the length and severity of the depression revealed symptoms of fundamental economic maladjustment, and that intervention of the federal power in the field of price was an immediate and pressing necessity, if widespread bankruptcies and a continuation of the "downward spiral" of prices, employment and wages were to be averted. Business was incurring mounting deficits, directly caused by the failure of goods to command adequate prices or to move in sufficient volume, and such deficits could not be sustained much longer.

Some figures which give a crude quantitative measure of the extent to which these conditions manifested themselves will be cited. During March, 1933, the average level of wholesale prices had fallen 37 per cent below the level prevailing in 1929 (**), and industrial activity had declined to less than one-half of its 1929 rate. (***) Furthermore, these average declines concealed far wider fluctuations in individual industries

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(*) Smith, Adam, "Wealth of Nations, The"; Book I, Ch. X.

(**) Wholesale Prices - BLS. (Bureau of Labor Statistics)

(***) Index of Industrial Products - Federal Reserve Board.

and industrial groups. The extent of these disparities is revealed in the following table:

TABLE I

Decline of Prices and Production for Ten Basic Industries During 1933 as Compared with 1929

	Percent drop in Prices	Percent drop in Production
Agricultural implements	6	80
Motor vehicles	16	80
Cement	18	65
Iron and steel	20	83
Auto tires	33	70
Textile products	45	30
Food products	49	14
Leather	50	20
Petroleum	56	20
Agricultural commodities	63	6 (*)

But what was perhaps most destructive of the morale of the individual business man was that no matter how far prices dropped the pressure for further reductions did not abate. If anything, it was intensified. Fixed charges on idle equipment had to be met, and the excess of productive facilities over effective demand was tremendous. Some measure of the extent of this over-capacity may be derived from the following computation:

During 1929 the Federal Reserve Board index of total industrial production reached a peak of 125 (**) (based on 1923-5 = 100). The average for the year 1929 was 119. According to a study conducted by the Brookings Institution, even this high figure represented slightly less than an 80 per cent employment of the nation's producing facilities. (***) On the basis of this estimate capacity operation would correspond to an index of approximately 150.

(*) Means, Gardiner C., Industrial Prices and Their Relative Inflexibility; Senate Document No. 13, p. 8;74th Congress, 1st session.

(**) These indices represent physical volume of production, and are adjusted for seasonal variation.

(***) Brookings Institution "America's Capacity to Produce" p. 146.

In contrast to this high potential rate, average production during 1933 was 76, and during 1934, 79; representing a decrease of over one-third from the 1929 average. (At the trough of the depression, in the summer of 1932, and again during the early spring of 1933, the index had fallen below 60.) Even after allowing for some degree of retirement of excess facilities, it may be estimated that industry as a whole utilized not much more than 50 per cent of its available capacity during 1933 and 1934.

Under these conditions, then, sharply reduced volume at lower prices was forced to carry a practically unchanged burden of overhead charges. Instead of retiring excess capacity, every effort was strained to utilize it because, for reasons which will be discussed later, any sale might be considered profitable if it returned more than the actual added cost of making it.

In many cases prices were maintained at a level nominally high; no concern cared to initiate open price cutting because of the certainty that such cuts would be met. Instead, price inducements usually took the form of secret rebates, excessive discounts and trade-in allowances, and the like, so that the realized price frequently bore little relation to the nominal. Every variety of practice was indulged in to secure a slightly greater share of the volume of business available.

Where a concern could not meet the demands of its creditors, and was forced into bankruptcy - and it was frequently not the inefficient but the efficient plant with inadequate cash reserves to which this happened - the result was not a withdrawal from the field but simply a change in ownership. With fixed charges reduced as a result of the re-organization, lower costs permitted a reduction in price which hitherto solvent units were unable to meet, leading in time to further bankruptcies and intensified dislocation. During 1932, 31,822 concerns had been forced into bankruptcy, representing total liabilities of $928,313,000. (*)

II. THEORETICAL BACKGROUND

A. Existence of Fundamental Economic Dislocations

To many economists these conditions, while sufficiently serious taken alone, were but the external manifestations of a far more deep-seated disorder. Ever since the days of Adam Smith it had been preached that free competition through the mechanism of price would automatically insure the satisfactory operation of the economic structure. Basic American policy was predicated on this doctrine. The maintenance of free competition was one of the cardinal aims of the Federal Government.

(*) Source: Dun and Bradstreet.

But somehow the picture did not fit the facts. The promised automatic adjustments either failed to appear or were at least delayed beyond tolerance. Questions began to be raised as to whether the fundamental postulates on which the laissez faire theory had been predicated were any longer tenable.

In the opinion of these critics the competitive system failed to work precisely because competition was no longer predominantly free, but was being increasingly replaced by what was termed imperfect or monopolistic competition. The determination of prices through the so-called "law" of supply and demand failed to yield satisfactory results because price was no longer permitted to adjust freely to market conditions.

The manner in which prices are determined on the market is obviously at the heart of any discussion of price control. An appraisal of the possibility of limiting price competition must proceed from an analysis of the manner in which price competition takes place. Consequently a brief examination of the nature and function of the price mechanism, both under free and under imperfect competition, appears essential.

B. The Theory of Free Competition

1. Determination of Market Price.

Granting the existence of a system of free competition, price in the first instance is the result of bargaining between potential buyers and sellers of a commodity in a free market. It is assumed that the number of potential sellers is indefinitely large, that these sellers are all independently competing to dispose of their wares, and that no individual seller is so important in size that by withholding his supply he can affect appreciably the total amount offered for sale. It is further assumed that the number of buyers is likewise indefinitely large; that they have no preference for the wares of any individual seller; that these buyers compete with each other independently and that no single buyer buys in such quantities that his withdrawal from the market can appreciably reduce the total demand. Further assumptions are that individual buyers and individual sellers are, by and large, possessed of relatively equal shrewdness and that they are equally informed of existing conditions of demand, supply and price.

Where these conditions exist, market price is determined not by the fiat of an overshadowing producer or group of producers, nor by the dictate of one important consumer or consuming group, but rather by a process of bargaining, with buyers and sellers having an equal voice in the proceeding and an equal influence on the result. Furthermore, the price of any commodity will be uniform on any market at any given time. This briefly, is the "law of supply and demand" of classical economists.

2. The Concept of a "Normal" Price. Relation between Price and Cost.

This analysis, however, applies only to the fixing of an immediate, or market price, and assumes not only an existing demand schedule but also a preexisting supply of goods. It is at this point that production cost enters the equation. If the market price is fixed at a level so low that certain productive facilities - or certain producers - can not profitably continue to operate, such productive facilities or producers must eventually leave the field, with a consequent reduction in supply. With supply reduced, if demand is unchanged, price on the market will rise to a level sufficient to compensate the producers to expand their output to a level commensurate with demand. Hence there arises an indirect dynamic adjustment of price to production cost, but such adjustment is not immediate and presupposes ready mobility of capital.

> "****the demand for any goods being taken for granted, cost of production fixes the limit upon the supply of that good - if it be a reproducible good - and determines the price of the good, solely through modifying the volume of the supply; * * * *." (*)

3. The Principle of Automatic Adjustments.

Where these conditions, characteristic of the "free competition" postulated by classical economists, exist, the operation of the price mechanism is automatic and rapid. The prices not only of commodities and services, but also of labor, and of the hire of land or capital are flexible and respond to the free interplay of economic forces. The equilibrium is, it is true, dynamic rather than static, but any prolonged maladjustment should not occur. If demand for any specific commodity changes, the market price will also change and productive facilities will then be added or eliminated. Where a more widespread change affects general demand, all prices may drop; but costs of production, which are themselves composed of prices, will also drop and equilibrium between prices and costs will rapidly return.

4. The Function of the Free Price Mechanism.

Carrying the argument further, under these conditions the determination of price through free competition performs an extremely valuable function. Decision by an entrepreneur as to alternative employments of capital must be based on a comparison of relative prices. (**) Consequently a free price system under con-

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(*) Davenport, H. J., "The Economics of Enterprise"; Ch. VI.

(**) "At every stage of the economic process under free enterprises, from production through exchange to consumption, the continuous comparison of relative price provides the main criterion by which decisions can be taken." - League of Nation Survey, 1935.

ditions of perfect competition will direct the productive effort of a society into those channels, and to that extent in each channel, which that society expressing itself through the price mechanism finds most desirable; in short, the aggregate production of wealth will tend to be a maximum.

C. The Problem of Imperfect Competition.

1. Failure of Automatic Mechanism to Function Properly.

However, the actual economic and industrial structure of the United States is no longer accurately reflected by these postulates of the laissez faire school. Fundamental changes in our business structure have apparently prevented the price mechanism from functioning properly. The general fall in prices which started in 1929 did not appear to create its own corrective for a period so long that some had begun to despair of the possibility of "natural" recovery. And if the competitive system of checks and balances had not in fact completely broken down, certainly it could safely be contended that its operation was being impeded to an increasing extent by the operation of factors alien to its assumption.

2. Monopolistic Prices.

Looking first at the theory of the free market, to what extent and for what commodities does it portray existing conditions accurately? It is obvious, of course, that where an actual monopoly exists price is a result, not of market action, but of the unilateral determination of the monopolist. Virtually the same effect may ensue from agreements by powerful groups to act in concert.

3. Effect of Size

There is, further, an increasingly important twilight zone that is neither monopoly nor free competition, but in which the postulate of relative equality between buyers and sellers, and between buyer and buyer, and seller and seller, has been destroyed by the increasing concentration and integration of business. Where a few large units dominate the production of a commodity, even though they may be in active competition, and where entrance into the industry is difficult because of large capital requirements, any one of these units, by withholding its product, can so diminish supply as to force a readjustment of price to a level more to its liking. Conversely, a similar situation may exist on the buying side; where a corporation accounts for a large fraction of the total demand for a product it can force a substantial decline in the market price by the simple expedient of staying out of the market temporarily. Prices so determined may be termed "managed" or "administered," but it should be noted that the "managing" can be done by either seller or buyer. In the former case prices would tend to be higher, in the latter lower, than would be the case in a free market.

4. Necessity of Planning Production

An additional factor preventing any ready adjustment of price to demand and supply, and of supply in turn to price, is the necessity in

many industries of planning production schedules for long periods in advance. Such schedules cannot be readily adjusted to market fluctuations, introducing an added element of inflexibility.

5. Inequality of Producers-Consumer Preference.

The assumption of equality between sellers, and of the indifference of buyers as between the products of different sellers, is further impaired by the value attached to such considerations as brands and trade marks by the buying public, frequently as a result of intensive advertising campaigns. Where preference is attached by the potential consumer to a trade marked product, equivalent unbranded articles can be sold only on the basis of a price concession.

6. Unequal Price Decline During Depression.

The result, then, is an economy in which free competition is no longer the predominant price determinant except in the field of agriculture but in which free prices, monopolistic prices, and managed prices co-exist. This condition carries with it the important implication that the old automatic adjustment of price to demand no longer prevails. During a period of general business depression, instead of a relatively equal decline of all prices, we find that free prices drop much more sharply than monopolistic or administered prices.(*) In those industries in which price levels are deliberately maintained in the face of falling demand, one of the effects may be a sharper curtailment of production than would otherwise be necessary. However, in many cases at least, sales fall off even more sharply where prices are flexible than where they are rigid. When the prices of a commodity are falling, potential buyers may avoid purchasing in the belief that further declines are inevitable. Where, on the other hand, prices are relatively stable, there is no such psychological incentive to defer purchase.

7. Intrusion of Other Rigid Elements.

(a) Inflexibility of wage structure.

Administered prices for many industrial products do not, moreover, constitute the sole important element of rigidity. The wage structure has become increasingly inflexible, due in part to the force of custom, in part to the efforts of labor unions, and in lesser part to social legislation.

(b) Increasing importance of fixed charges.

Perhaps the most important intrusion of rigidity is the accelerating replacement of variable by fixed charges as elements of the cost of production. With increasing substitution of machines for man power, an ever more important role is played by depreciation charges on equipment and interest on borrowed capital. It is probably true

(*) See - Means, Gardiner C., "Industrial Prices and Their Relative Inflexibility." Senate Document #13, 74th Congress, 1st session. Also - "Prices and Price Provisions in Codes" - Report by Division of Research and Planning; NRA files.

that depreciation charges need not be regarded as strictly fixed, and that underallowance during slack periods can be compensated by overallowance during peaks. Interest, however, is a charge that must be met if bankruptcy is to be averted; and long term funded debt, optimistically contracted during booms, is difficult to commute during depressions.

8. Failure of Prices to Adjust Themselves to Cost of Production.

This condition, in turn, has further serious implications. For those commodities with flexible prices, price declines during a depression do not tend to adjust to a "normal" value, equivalent to total production cost, through the contraction or expansion of supply, as was postulated under the theory of free competition. Instead prices tend to approach closely the direct costs of production. For each plant, instead of retiring excess equipment, strains every effort to maintain and even increase production. With the heavy pressure of fixed charges any sale is profitable that returns a little more than its direct cost, or, to be more accurate, that returns more than the actual increase in costs which results from making it.

If bankruptcy ensues as a result of this intensified competition, the plant of the bankrupt is rarely withdrawn from production. Instead, with fixed charges reduced through reorganization, a fresh supply may be thrown on the market and a new impetus given to the decline of prices.

True, a period will eventually ensue when obsolete and worn out equipment requires replacement. Then, and only then, may the advisability of investing new funds in the industry become the controlling factor in limiting productive facilities, with a consequent tendency toward adjustment of price upward toward total cost of production as supply is curtailed. Promise of such automatic readjustment within five years or a decade, however, can scarcely be considered a satisfactory solution of a present problem; certainly it brings little cheer to an entrepreneur seeking immediate relief from a situation which he finds intolerable.

9. Failure of Laissez Faire Policy

These factors, then, the shift from free to monopolistic and administered prices, the relative inflexibility of wages, the increasing importance of fixed charges and the failure of excess facilities to be withdrawn with reasonable promptness appear to constitute fundamental deviations from the essential postulates of the laissez faire school. The automatic adjustment of producing capacity to demand is revealed to be, not a natural and immutable law, but rather a description of consequences which might be expected to flow from a specific pattern of economic organization; this pattern, while possibly fairly universal a century ago, is today honored more in the breach than in the observance. The coexistence of relatively free and rigid elements, moreover, subject the economic organism to unequal strains under the stress of the depression, and occasion such friction in the economic machine that automatic adjustments are

delayed beyond tolerance.

Some economists go so far as to say that this differential action of prices caused the entire laissez faire policy to fail.

> "The shift of market to administered prices *** is the development which has destroyed the effective functioning of the American economy and produced the pressure which culminated in the new economic agencies of government. ***
>
> "The basic cause for the failure of a laissez faire policy is to be found in the very same forces which have made possible a high standard of living for all, namely, the gradual, century-long shift from market to administrative coordination of economic activity which has resulted in modern industrial organization and modern technology. This shift to administration has brought a new type of competition and inflexible prices which disrupt the workings of the market."(*)

10. Similarity of Conditions in Canada.

It is pertinent to note that fundamentally similar conclusions were arrived at by a Canadian parliamentary commission, the Royal Commission on Price Spreads, which conducted a comprehensive investigation into the causes of the dislocation of the Canadian economy.

> "In the past, government, through anti-trust and combines legislation, has been concerned to maintain, rather than to control competition, which has been accepted as generally beneficial; congenial to the pioneer attitudes, and justified by economic argument. Competition seemed to promise a flexibility of prices which was most valuable and indeed necessary in an economy as variable as Canada's. It also seemed to promise a satisfactory stimulus to efficiency, and a reasonable guarantee of low prices to the consumer. The argument was carried further to show that competition tended to direct productive activity in such a way as to maximize the national income. But this argument was based on the assumption that competition was what was called free, or "simple." In earlier stages of capitalist development the actual economic world sufficiently approximated this condition to justify some optimism as to the beneficial effects of competitive freedom from control or interference. But now conditions have changed. Concentration in production and distribution, resulting from the development of the corporation and the large scale business unit, has made the actual competitive scene progressively less like the simple competition of the laissez faire economists. In some cases

(*) Means, Gardiner C., "Industrial Prices and Their Relative Inflexibility"; Senate Document #13, 74th Congress, 1st session; pp. 8-9.

the change has been complete and the result has been monopoly. But more often the development has not proceeded quite so far, and there has arisen a condition which has long been discussed by economists under the name of 'monopolistic or imperfect competition'. Here it is recognized that the results of unregulated competition are frequently far from beneficial.

* * * * * * *

"It is, furthermore, a tragic delusion that the solution for these economic problems can be left to automatic forces, because the conditions which once permitted the easy and equitable operation of such forces have ceased to exist. * * * Nor can we assume any longer that this monopolistic tendency is a merely incidental intrusion into a system predominantly and naturally competitive.

* * * * * * *

" - All these circumstances unbalance modern economic society in the sense that not all of its parts adjust themselves at the same speed or in the same degree to any influence that makes itself felt at any one point. Necessary readjustments are therefore concentrated on the flexible sections of our economy, where their effect is intensified by the rigidity in other sections. When different parts of a glass tumbler expand or contract at different rates, the whole glass may be cracked. If the economic structure is in part flexible, and in part rigid, any strain may lead to complete collapse."(*)

(*) Report of Royal Commission on Price Spreads: 1935, (Ottowa, Canada) Ch. II, pp. 5-12. (In Department of Commerce Library.)

CHAPTER III

THE DEMAND FOR PRICE REGULATION AND ITS PART IN THE FORMULATION OF THE NATIONAL INDUSTRIAL RECOVERY ACT

I. BUSINESS SEEKS A WAY OUT

The preceding paragraph has been designed to examine the extent of market disruption during the period immediately preceding NRA, and the basic economic difficulties underlying the failure of the price mechanism to function properly. In view of the conditions described there is little wonder that during the early months of 1933 business men in general, faced with the urgent necessity of immediately restoring profitable operations, were eagerly seeking a way out.

Their quest for a solution was not, however, directed toward the underlying maladjustments which had inevitably disrupted the market. It was not the theoretical problem but the immediate and visible symptoms with which they were concerned. The experience of the individual business man, by and large, was confined to the actual state of the market rather than to the forces which made the market what it was. Consequently, the remedies he proposed were designed to provide a means of correcting the visible problem. One thing was obvious - in some way income must be made to exceed expenses. And the only way to do this with reasonable expedition seemed to be to increase prices.

Controllable expenses had already been cut to the bone - or at least as far as the rigid elements of the economic structure permitted. Income, then, had to be increased. To do this sales had to be expanded or prices raised, or both. But sales expansion could be accomplished only in two ways, either through still further price reductions or through increased purchasing power. Of these the first hardly constituted a solution. The possible increase in the number of units sold was unlikely in the extreme to compensate for the decreased return per unit. And while the expansion of national purchasing power seemed a desirable goal, it was too general and too indefinite in nature to appeal to specific industries as the solution of their particular problems. The conclusion seemed inescapable. The only road to immediate relief was through some form of co-operative action to increase prices.

Envious eyes were cast on those favored industries in which prices had been maintained throughout the depression, frequently by concerted action through powerful trade associations. Where there were but a few large units and the capital requirements for entry into the field were substantial, such a course had been found feasible. For example, the Steel and Cement Industries had been able to maintain a fairly high degree of stability in the prices of their products. As an extreme, but not unique example, the wholesale price of sulphuric acid had not changed at all between 1926 and 1934. Such efforts were not always successful, and in a few cases had resulted in a complete debacle. For example, the maintenance of the price of copper at 22¢ and later at 18¢ a pound early in the depression had probably served to aggravate the later drop to approximately 5¢.

The anti-trust laws and the Federal Trade Commission, furthermore, exercised a restraining influence over the extent to which price fixing by concerted action could go. While it is possible that the enforcement of these laws had been relaxed somewhat in stringency, too obvious collusion was difficult.

An interesting sidelight on the opinion of trade association executives with reference to this relaxation of the anti-trust laws is cast by a statement of Charles B. Stevenson, senior partner of Stevenson, Jordan and Harrison, industrial engineers and trade association managers. Mr. Stevenson, who under NRA was responsible for the administration of nineteen code authorities, in an address delivered before the Annual Convention of the National Association of Cost Accountants, stated:

> "As a matter of fact, we did not actually operate under the system of unrestricted competition in the period from 1929 to 1929, notwithstanding the fact that the Sherman and Clayton Acts were on our statute books and that, theoretically, we were supposed to do so. Practically, under the Harding, Coolidge and Hoover Administrations industry enjoyed, to all intents and purposes, a moratorium from the Sherman Act, and through the more or less effective trade associations which were developed in our industries, competition was, to a very considerable extent, controlled. The Department of Justice acted with great restraint and intelligence and only enforced the Sherman Act against those industries who violated the laws in a flagrant and unreasonable manner."

Furthermore, in many industries, there were minorities who would refuse to participate in any form of concerted action, and who insisted on charting their own courses independently of the consensus of the majority. It was, therefore, believed by many that if the restraints contained in the anti-trust laws were removed, and some means provided for forcing recalcitrants into line, prices could be fixed at levels that would insure profitable operation to all and that production, employment and wages could be maintained at an even and satisfactory level.

Among the premises that made this line of reasoning tempting was the widespread feeling that unsatisfactory price levels were generally the direct result of price cutting deliberately initiated by the recalcitrant minority in each industry (i.e., the "chiselers" who refused to "play ball"), and that any concern which quoted prices lower than those prevailing was committing an act of highly questionable character.

Such conduct was considered especially reprehensible when a concern cut prices to a level below its own cost of production. It was argued that profitable operation was essential in order to permit industry to continue to produce and that, consequently, prices must

be sufficient to cover actual cost and leave a certain margin of necessary profit. It was further assumed that a definite cost of production could in all cases be determined by the use of sound cost finding methods and that the individual business man was free to base prices on his costs so computed and to maintain them at that level; that the only impediment in the way of such a procedure was the necessity of meeting the competition of a selfish minority. Selling below cost except, possibly, to meet competition, was conceived to be usually the result either of ignorance or of predacious intent. It was, therefore, contended that the elimination of such practices was essential to business recovery.

In connection with the attitude of business toward selling below cost the following further extract from Mr. Stevenson's speech is interesting:

> "For the benefit of those of you who did not attend that session, let me say that through the Research Department of our association we sent out a questionnaire to several thousand companies engaged in various lines of business in an endeavor to ascertain whether or not they sold below cost, why they sold below cost if they did so, and whether or not they thought it was good business policy.
>
> "The returns from our questionnaire showed conclusively that about 80% of the companies replying, and we had several thousand replies, admitted regretfully that they were from time to time forced to sell below cost to meet the tactics of competitors who resorted to selling below cost in an effort to secure an excessive percentage of the available business. About 20% of the replies indicated that the companies making the replies believed in selling below cost as a deliberate policy, believing it advisable to make whatever sacrifices were necessary to keep their plants operating at as near a capacity rate as possible. The 80% of the companies who did not like to sell below cost took the stand that it was an indefensible business practice and that the adoption of the selling below cost policy generally resulted in losses rather than profits.
>
> "After thoroughly discussing the facts brought out by our questionnaire and after a good deal of discussion from the floor, I think our session went on record to the effect that it was contrary to sound business policy to sell below cost except to meet prices which had been initiated by a competitor. In other words, seven years ago we were discussing the basic elements of price control which have been and still are the main basis of controversy in connection with the

operation of the National Industrial Recovery Act." (*)

II. ENACTMENT OF THE NATIONAL INDUSTRIAL RECOVERY ACT

It was with these ends in view, then, that business men in general backed the passage of the National Industrial Recovery Act. The possibility of limiting price competition, at least to the extent of banning the practice of selling below cost, was the principal benefit many anticipated from its passage.

At the Congressional hearings and debates preceding the enactment of the NIRA the aim to eliminate destructive price competition was frequently expressed. Thus, Mr. Henry I. Harriman, then President of the Chamber of Commerce of the United States, at a hearing before the Ways and Means Committee on May 19, 1933, stated in part:

> "Now, whatever the exact figures may be, it is perfectly evident that we cannot have a return to prosperity until the price level on general commodities has moved substantially upward and until many millions of these men who are now unemployed are put back to work. And the object of this bill which is before you is to accomplish these two results.
>
> "Whenever there is a great surplus of labor, whenever we are passing through a period of great depression, we always have cut-throat competition. It is inevitable. One man takes an order at a slightly less price than his competitor. In order to have a chance to break even on that low price he must not only use all the skill that he has but he must cut the pay of his working people. Then the other man, not to be outdone, cuts his price still further; and so the endless chain continues, of lower prices and lower wages, and lower wages and lower prices.
>
> "I believe the time has come when we must take out of competition the brutality of competition. We must take out of competition the right to cut wages to a point which will not give an American standard of living, and we must recognize that capital is entitled to a fair and reasonable return, and that therefore goods must be sold at a price which will enable the manufacturer to pay a fair price for his raw material, to pay fair wages to his men, and to pay a fair dividend on his investment."

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(*) Stevenson, Charles R., Price Control and Allotment of Business; address delivered before Annual Convention of the National Association of Cost Accountants, Cleveland, Ohio, June 26, 1934.

"Whatever is necessary to maintain American wages and American prices, based on those wages and on fair dividends should, in my opinion, be included in the bill." (*)

Under questioning by Representative Knutson as to whether the bill would assist industries to get back on their feet, Mr. Harriman replied:

"Yes, sir, because in this bill they can fix a fair price for their products, with the consent of the President."

Senator Robert F. Wagner, on June 8, 1933, in debate in the Senate, made the following statement:

"A suggestion was made that the price at which a particular commodity may be sold in the market would be fixed. The Senator was present during our discussions in the Committee. No such thing is contemplated as the fixation of prices. All that will be provided is that there shall not be any sale at a price below the cost of production and that may differ in different industries in different sections of the country.

"That, everyone admits, is an unhealthy situation, when industries are permitted to indulge in rebates, discriminations, and selling below the cost of production in order to destroy some little business man in the community and when he is wiped out, to restore the old price. It is that type of practice we are seeking to eliminate.

"The ruthless and predatory practices of large business to destroy small business are the things we want to guard against now. Sooner or later it will be understood by Senators that this is a bill to protect the small business man against the predatory practices of large business." (**)

Senator Wagner, however, differentiated very sharply between such limitations on destructive price cutting and price fixing. Quoting further from the debate in the Senate:

Mr. Wagner: "".....I have reiterated on the floor two or three times, and it was stated any number of times in the Committee, that it was not contemplated that prices shall be fixed, because the fixation of prices is not in conformity with the preservation of fair competition. I made that as clear as I could and still there is constant reiteration -- I do not think we ought to set up a straw man here and knock him down."

(*) Hearings before Committee on Ways and Means - House of Representatives, Seventy-third Congress, first session, on H.R. 5664, pp 134 and 138.

(**) Congressional Record, 73rd Congress, 1st Session, p. 5238.

Mr. Hastings: "I want to find out if there is anything in the bill which would prevent the fixing of prices."

Mr. Wagner: "Yes; because we are proving a code of fair competition and providing for practice of fair competition, and against practices which bring about unfair competition. That is also well known in the law. The Senator from Idaho was anxious to have that specifically defined. We do not define it in the anti-trust laws. We do not define it in the Tariff Commission Act."

* * * * * * * *

"I do want the codes to provide, which every fair competition code should provide, that there shall be no selling at prices below the cost of production." (*)

Curiously enough, the Act as approved included no provision specifically permitting price control; the only reference to destructive price cutting was included in Section 4 (b), the licensing provision, and not in Section 3, the code-making power. From the debates quoted, however, there is no doubt that the right to limit price competition, at least to the extent of outlawing sales below cost, was considered implicit in the general power to ban unfair competition.

(*) Congressional Record, 73d Congress, 1st session, pp. 5244-5.

CHAPTER IV.
PRICE CONTROL DEVICES
DEVELOPMENT OF NRA POLICY

I. NRA ACCEDES TO THE PRINCIPLE OF PRICE CONTROL

Although the support of business men for the National Industrial Recovery Act was in large part predicated on their well-nigh unanimous desire to use it as an instrument for limiting price competition, sight must not be lost of the fact that this was not its fundamental purpose. The Act was primarily designed to stimulate the flow of goods, through increasing the national purchasing power. But this was an aim directly antithetical to any immediate increase in individual prices, especially in view of the fact that the level prevailing in June, 1933, had already risen appreciably above the lows of the year. Increased purchasing power and increased industrial prices would merely operate to cancel each other.

Furthermore the avowed object of another major facet of the New Deal emergency program would be seriously imperiled by any general rise in industrial prices. The Agricultural Adjustment Act had as its specific aim an increase in the price of agricultural commodities relatively to industrial commodities. It was designed to raise the prices of the things the farmer sold as compared with the prices of the things he bought, an aim scarcely compatible with the desire of business for price control.

Consequently President Roosevelt, in his statement issued on June 16, 1933, outlining the policies of the Act stated:

> "***If we now inflate prices as fast and as far as we increase wages, the whole project will be set at naught. We cannot hope for the full success of this plan unless***we defer price increases as long as possible."

In line with this policy, General Johnson on June 19, 1933, invited the submission of codes covering wages and hours and "such means as each industry may find necessary to protect its constructive and co-operating majority from the wasteful and unfair competition of minorities and recalcitrants." Additions and refinements were to come later; the consumer's buying power was to be protected and the interest of the public in the matter of prices was to be recognized. (*)

Industry, however, had looked forward to NRA precisely because it would permit concerted efforts directed at eliminating trade practices considered unfair; foremost among which was the not too accurately defined practice of "selling below cost." It was contended by the representatives of industry that increased expenditures for labor would be out of the question unless prices could be raised (or, more euphemistically, "stabilized"). As a result of these representations, General Johnson announced on June 23 that basic codes might contain agreements

(*) NRA Bulletin #2, June 19, 1933.

not to sell for less than cost of production. (*)

With but few exceptions, industries seeking codes, encouraged by this shift of policy, included in their proposals some device designed to regulate prices. In many cases, especially in the earlier codes, the purpose, explicit or implicit, was not merely to control but to eliminate price competition. In some cases there was an avowed intent to legislate a minimum profit to all industry members.

As an expression of this aim a further quotation from Mr. Stevenson's address is of interest, because of his influence on the policy of so many Code Authorities:

"If we are going to fix prices, and I sincerely believe that it is necessary that we should do so, it is just as necessary that we limit them on the up side as it is that we limit them on the down side. My own belief is that there is in all cases a certain fair price at which commodities should move between the producer and the consumer, certain fair tolls which should be exacted by those who handle these commodities on their way from the producer to the consumer.

"If I were in a position to write the ticket for industry in this country, I should give each industry the right to name the prices at which its products should be sold, and I should enforce these price determinations through the due process of law. In my opinion, these prices should be based on certain factors which would insure absolute fairness and equality of treatment to capital, management, labor, and consumers - four factors involved in every transaction. I should determine these prices on the average industry cost, using replacement costs for raw material, adequate wage rates for labor, and overheads based on a reasonable use of the facilities of the industry. I should not expect this cost to include carrying charges on idle, unused, or excessive capacity. Executive salaries should be checked and should bear a reasonable relationship to the size of the concern involved.

"After determining these cost factors, the selling price should include a reasonable return, let us say 10%, on the true capital value of the active facilities in the industry, calculated on replacement values. No return should be figured for excessive valuations or watered capital." (**)

The attitude expressed by Mr. Stevenson and others who thought along similar lines was predicated in part on the following line of reasoning. It assumed that in any industry, regardless of the price level prevailing, each concern would tend to have a fairly well defined

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(*) Galloway, George, "Genesis of NRA Price Policy and Practice." Plan Age -(July-August 1935), p. 10.

(**) Stevenson, Charles R., "Price Control and Allotment of Business," op. cit.

proportion of the total industry volume. Price reductions by any one member would be sure to be met, with the result that the same or possibly a slightly increased aggregate industry volume would continue to be split in much the same way. As a result everyone in the industry would lose through lower prices, and none could gain through securing a larger share of the total. Hence, price competition being worse than futile, why not fix prices? And since NRA was designed to rehabilitate industry, was not the fixing of price at a level profitable to all the surest way of accomplishing this aim?

This line of reasoning failed to find adequate support within NRA and the more drastic proposals of industry were greatly modified prior to approval, at the insistence of NRA officials. The principle of limiting price competition, however, was retained and 441 (*), or approximately 80 per cent of a total of 557 basic codes contained some form of minimum price provisions. Similar provisions were included in 209 supplementary codes.

II. PRICE CONTROL DEVICES USED - DEVELOPMENT OF POLICY

A. Classification of Devices

These provisions fall into three major categories:

1. Provisions permitting the Code Authority or similar agency, usually subject to Administrative approval, to establish the schedule of minimum prices.

2. Provisions permitting the fixing of minimum prices during declared emergencies.

3. Provisions prohibiting sales below cost.

B. Cost Protection

1. Popularity and nature of the device.

Of these devices, by far the most popular utilized under the codes was the prohibition against sales below cost. Inherently plausible, this type of control recommended itself both to business men and to N.R.A. officials. In fact, it was frequently suggested by the latter as an alternative to more sweeping proposals advanced by industry. From June 23, 1933, until June 7, 1934, during which period the vast majority of codes were formulated, provisions of this nature were sanctioned by N.R.A. policy, received administrative approval as matters of course, and were questioned in principle in very few instances. As a result, 399 basic and supplementary codes contained price control clauses predicated on cost, although, for reasons which will be considered later, these devices were actually operative in only 53 codes.

(*) These and subsequent figures as to frequency of various controls are taken from Report No. 40-D, Post Code Analysis Unit, Research & Planning Division, NRA, "Minimum Price Provisions in Approved Codes." The classifications in this bulletin are necessarily somewhat arbitrary, but, except where indicated otherwise, were accepted as correct. Furthermore, the tabulation is based on code provisions as of May 29, 1935, & takes no account of earlier provisions which had been eliminated or modified by amendment.

In all but a few cases, these provisions prohibited sales below individual cost. In general it was deemed necessary to temper this regulation by permitting a member to sell below his own cost in order to meet competition. The inclusion of this provision was prescribed in the first definite policy pronouncement issued by N.R.A. (*)

In a few instances, instead of individual cost, sales below "reasonable cost," "representative Cost," or "average cost" were banned. Such provisions, however, were contained only in the earlier codes.

2. Cost protection implemented by cost accounting systems.

Prohibitions against selling below cost could become effective only when geared to some standard means of determining cost. In the great majority of cases the code provided that the Code Authority prepare a uniform cost accounting system which would become effective upon approval by the Administrator. Policy as first announced merely recommended that:

> "In a price provision based on cost, cost should be defined to the extent of indicating its principal elements in a general way. Cost of production may include a reasonable allowance for depreciation, but not for return on capital."(**)

The same policy pronouncement also included the following statement:

> "Provisions in codes referring to new cost accounting systems should provide for recommendations to the Administrator and the adoption of the accounting system should never be made mandatory, at least without adequate period for adjustment, and without allowing the utmost latitude consistent with obtaining information on a comparable basis."

At this stage in policy formulation, therefore, it was apparently believed feasible to base the no-sales-below-cost provision on a mere prescription of cost elements rather than on a complete accounting system.

The so-called "Model Code," (***) issued on the same date as the above policy memorandum, similarly drew a distinction between cost accounting systems, whose purpose was primarily educational, and "principles of costing" to which provisions against selling below cost were to be tied. It did, however, provide that the "principles of costing" be formulated by the Code Authority and approved by the Administrator.

(*) N.R.A.; Confidential Policy Memorandum, October 25, 1933.
(**) N.R.A. Confidential Policy Memorandum, Oct. 25, 1933.
(***) N.R.A. Confidential Policy Memorandum, Oct. 25, 1933.

Civil or criminal action, however, required something more definite than "principles of costing" as a yardstick for determining whether sales were below cost. Consequently selling below cost prohibitions were generally predicated on provisions establishing mandatory systems of cost finding. This trend was recognized by the following declaration of policy issued on January 29, 1934.

> "The following has been adopted as a standard clause providing for uniform cost accounting and may be used also as a substitute for similar clauses in approved codes if the industries desire to change:
>
> > 'The Code Authority shall cause to be formulated an accounting system and methods of cost finding and/or estimating capable of use by all members of the industry. After such system and methods have been formulated, full details concerning them shall be made available to all members. Thereafter all members shall determine and/or estimate costs in accordance with the principles of such methods.'
>
> "The advantages of this form of clause are two: (1) it is completely divorced from the selling-below-cost clause, and (2) it introduces the idea of cost estimating which is what some industries need rather than or in conjunction with, cost accounting." (*)

C. Direct Minimum Price Fixing

Although the majority of minimum price provisions approved during this early period were predicated on cost and defined by some standard system of cost finding, individual industries were consistently striving to secure more drastic and more rigid controls. They frequently urged that Code Authorities be permitted to establish a floor price that would apply to all members.

These requests were rejected in the majority of cases, although there was no definite policy ruling against their approval. The policy memorandum of October 25, 1933, to which reference has been previously made, merely specified that "no real or indirect fixing of sales prices (as opposed to minimum prices) will be accepted." However, both the Research and Planning Division and the Consumers' Advisory Board strenuously opposed any broad delegation of power to the Code Authority to establish fixed minimum prices. Such clauses were consequently approved only in circumstances deemed exceptional by N.R.A.

The difficulties inherent in these attempts to control prices, whether through cost protection devices or through the establishment of fixed minima, became apparent to the N.R.A. late in the fall of 1933. Probably the outstanding case occurred in the Cleaning and Dyeing Trade, in which a militant minority categorically refused to abide by the prices set and proceeded to violate them openly. Protests also appeared

(*) N.R.A. Office Memorandum, January 29, 1934.

in increasing numbers from individual members of various industries, from important consumers, such as large department stores and public purchasing agents, and from the public. Objection was also voiced on the floor of Congress, notably by Senators Borah and Nye. On the other hand Code Authorities continued to press for the continuation of the attempts at price control.

D. Emergency Price Regulation

The first result of the attempt to reconcile these divergent views was the issuance on February 3, 1934, of an office memorandum which advanced the concept of emergency price regulation. This memorandum is quoted below:

"SELLING BELOW REASONABLE COST

"When the Code Authority determines that an emergency exists in this industry and that the cause thereof is destructive price-cutting such as to render ineffective or seriously endanger the maintenance of the provisions of this Code, the Code Authority may cause to be determined the lowest reasonable cost of the products of this industry, such determination to be subject to such notice and hearings as the Administrator may require. The administrator may approve, disapprove, or modify the determination. Thereafter, during the period of the emergency, it shall be an unfair trade practice for any member of the industry to sell or offer to sell any products of the industry for which the lowest reasonable cost has been determined at such prices or upon such terms or conditions of sale that the buyer will pay less therefor than the lowest reasonable cost of such products.

"When it appears that conditions have changed, the Code Authority, upon its own initiative or upon the request of any interested party, shall cause the determination to be reviewed.

"This provision should be recommended to industries as desirable in new codes, and of course may be used as a substitution in any approved code if the industry desires.

"Under this provision no exception to meet lower cost competition within the industry is necessary.

"Other exceptions, as to distress stocks for export purposes, and to compete with lower cost imports, may remain as at present."(*)

Behind this declaration of policy lay the conviction that any attempt at price regulation was unwise, in the majority of cases, but that the establishment of a fixed price floor might be warranted in unusual situations in which price demoralization created an acute problem. Despite the issuance of this memorandum, however, devices of other types, such as cost protection and fixed minima, continued to be sanctioned.

(*) Office Memorandum dated February 3, 1934. (In N.R.A. Files.)

On March 5, 1934, General Johnson suggested at a conference of Code Authorities the need of a "more uniform and equitable rule of price stablization in those cases, where it is necessary to maintain wages at a decent standard against certain results of predatory and cut-throat competition, and further insurance against increase of price faster and further than increase of purchasing power."(*)

Shortly thereafter the Administration appointed Dr. Leverett S. Lyon as Deputy Administrator for Trade Practice Policy. As a result of the consideration given to the problem by Dr. Lyon and his advisory Committee, Office Memorandum No. 228 was issued on June 7th. This memorandum, described below, definitely precluded any further approval by N.R.A. of price control devices based on cost protection or on fixed minimum prices.

Office Memorandum No. 228 in effect extended and modified the previous memorandum of February 3, 1934, The essential changes were that the Administrator rather than the Code Authority was given power to determine whether an emergency existed, and that any declaration of minimum prices under the terms of the emergency was to be limited to specific products for a stated period.

This memorandum further declared "willfully destructive price cutting" to be an unfair method of competition. It provided that any interested party could complain to the Code Authority that "any filed price constitutes unfair competition as destructive price cutting, imperiling small enterprise or tending toward monopoly or the impairment of code wages and working conditions."

The Code Authority was to investigate and afford the member whose conduct was complained of an opportunity to make appropriate adjustment. Any differences of opinion between any parties to the complaint were to be referred to the Research and Planning Division for adjudication.

As far as information is available there is no record of any cases in which this provision against destructive price cutting was actually invoked.

Office Memorandum No. 228 also ruled against any further inclusion of mandatory cost accounting provisions in codes. The adoption of cost accounting systems by individual members was to be voluntary , and their purpose primarily educational. The recommended clause specified that "sound cost estimating methods should be used and consideration should be given to costs in the determination of policies."

A series of memoranda (**) were issued in the spring of 1935 which were designed as a guide to administrative policy for the period of code revision anticipated subsequent to June 16, 1935. These essentially reaffirmed the policy originally promulgated on June 7, 1934 in Office Memorandum No. 228.

(*) See Galloway, Geo. B., "Genesis of N.R.A. Price Policy and Practice", Plan Age, p. 13;(July-August, 1935)

(**) N.I.R.B , Administrative Policy, New Series Nos. 1, 2 and 3

At the time of the Schechter decision, therefore, N.R.A. policy on direct price regulation may be summed up as follows:

(1) Cost accounting systems were to be purely optional, not mandatory.

(2) Cost might be considered a guide to pricing policies, but there was to be no general prohibition against sales below cost.

(3) Minimum prices were to be established only for limited periods to cope with conditions so exceptional as to constitute obvious emergencies.

(4) One exception to these general rules was provided. The curbing of the use of loss leaders by such devices as no-selling-below-invoice-plus-a-part-of-labor-cost was specifically sanctioned on May 2, 1935.(*)

III. OTHER PRICE CONTROL DEVICES.

The devices so far considered prescribe price minima directly. The trade practice provisions of approved codes, however, contained many other clauses designed to raise or stabilize the price level, or to secure a greater degree of price uniformity among members. In some cases such provisions were adopted in place of direct price controls, but in most instances they were designed to be used concurrently.

Most universal, perhaps, were restrictions on terms of sale, discounts, rebates, guarantees, trade-in allowances and the like. These were, in most cases, essential to lend meaning to direct price restrictions. Price is, obviously, but one part of the sales bargain. Even prior to the codes nominally high or uniform prices had been maintained because of the probability that any reduction in the list price would immediately be met or bettered by competitors, and price competition had centered on the allowance of more attractive modifications.

Code sponsors, consequently, bent every effort to include restrictions sufficiently drastic to forestall ready evasion of minimum price provisions.

Some idea of the extent to which it was deemed necessary to restrict granting of indirect concessions to influence a sale is revealed by an analysis conducted by N.R.A. of trade practice provisions in approved codes in which such restrictions are listed under the following major heads:(**);

(*) N.I.R.B., Administrative Policy, New Series No. 2, May 2, 1935

(**) Summary of Analysis of Trade Practice Provisions in N.R.A. Codes, Division of Review, p. ii; (In N.R.A. files.)

1. Concessions primarily related to time of buyer's payment.
2. Concessions primarily related to risks of buyer.
3. Concessions primarily related to supplying additional goods.
4. Concessions rendered buyer through use of seller's employees or property.
5. Concessions rendered buyer through financial assistance or favor.
6. Concessions related to manner and/or time of shipment.
7. Concessions through payment or diversion of commissions or fees to customer.
8. Concessions through allowances or payments for value rendered by buyer.
9. Concessions through acceptance of competitor's materials from buyers.
10. Concessions through sale of substandard or obsolete goods.
11. Concessions granted during performance contrary to provisions of agreement.
12. Acceptance of forms of payment in which concessions may be concealed.
13. Types of agreements, offers, invoicing, etc., by means of which concessions may be concealed.
14. Types of agreements, offers, invoicing, etc., primarily designed to prevent the concealing of concessions.

A second major group of codal provisions designed to influence prices were those prescribing open price systems and bid filing schemes. Provisions of this nature had a number of purposes:

1. The publicity attendant upon filed prices made it far easier to detect violators of direct minimum price restrictions; especially was this true where minimum prices were based on individual cost. In most cases, in fact, cost protection devices would have been utterly unenforceable without ancillary price filing provisions.

2. Open price systems often tended toward a fairly high degree of uniformity of quoted prices. Price cuts were thought to be less likely in cases where they were certain to be met in short order. Furthermore, the Code Authority and other industry members were in a position to exercise a substantial degree of pressure to secure a rescission of such cuts.

3. In the case of bid filing schemes, buyers were deprived of the possibility of securing concessions by misrepresenting terms offered by competitors. Many bid filing schemes went further and prohibited any change in the filed bid of any member without a complete reopening of the auction.

4. In some cases the publicity attendant upon open prices provided a sufficiently strong lever to insure the maintenance of prevailing price levels without the necessity of invoking the direct minimum price restrictions. In these cases the open price system was the primary price control device with direct price restriction of secondary or little importance.

Also directly related to pricing problems were provisions primarily designed to preserve or modify channels of distribution. These provisions were generally included to prevent disturbances in distributive relations from dislocating the price level. Provisions with this end in view may be listed under the following 7 major heads: (*)

1. Provisions regulating customer classification.
2. Restrictions on granting of trade differentials.
3. Restrictions on granting of quantity discounts.
4. Provisions for the maintenance of resale prices and adherence to codal provisions by customers.
5. Prohibition of discriminatory practices.
6. Provisions relating to controlled sales representatives.
7. Miscellaneous provisions designed to preserve or modify channels of distribution

Basing point provisions were designed to secure a greater degree of uniformity in price and to lessen advantages due to geographical location

Another group of trade practice provisions was designed to control the price level indirectly through limiting supply. Devices of this nature included restrictions on new productive capacity or on the use of existing facilities.

All of these provisions are the subject of studies being conducted independently at the present time. Consequently, they will be considered in this report only as they immediately bear on the subject of direct minimum price restrictions.

(*) Summary of Analysis of Trade Practice Provisons in N.R.A. Codes, Division of Review, p. ii. (In N.R.A. Files.)

CHAPTER V

PROBLEMS CONFRONTING INDIVIDUAL INDUSTRIES

I. PROBLEMS AS RELATED TO INDUSTRY GROUPS

This report has been concerned thus far with a survey of the problems confronting industry as a whole and of the crystalization of the general dissatisfaction into a program for the limitation of price competition. It is now necessary to consider more concretely the specific difficulties which led individual industries to seek such aid.

In each of the industries selected for study by the Minimum Price Unit, with possibly one exception, there existed a more or less serious disruption of the price structure. Due to various specific causes, usually traceable in ultimate analysis to the basic maladjustments discussed in Chapter III, the free operation of market forces failed, at least temporarily, to insure a price level at which the majority of the industry could operate without incurring mounting deficits.

These specific causes of dislocation revealed a very definite general pattern. In part this pattern is related to the functional groups into which the various industries fall. As indicated in Chapter I, the industries studied can be divided into the following categories:

I. Natural Resource Industries
II. Consumers Service Trades
III. Manufacturing Industries
  A. Producers Goods Industries
    1. Industries producing goods for which there is no independent demand
    2. Industries performing services for producers
    3. Other producers goods industries
  B. Consumers Goods Industries
IV. Distributing Trades
  A. Retail Distributing Trades
  B. Wholesale Distributing Trades

II. PROBLEMS CONFRONTING INDUSTRY GROUPS

Prior to an analysis by problems, a brief description will be presented of the characteristics of each of these functional groups. A more detailed study of individual industries is included in Appendix II.

A. Natural Resource Industries

The only natural resource industry it was possible to survey was the Lumber and Timber Products Industry. Price control under the codes was also applied to the Bituminous Coal Industry, but limitations of time have prevented its inclusion.

Probably the outstanding cause of price unsettlement in the Lumber and Timber Products Industry, (and also in the Bituminous Coal Industry) is the pressure of heavy overhead charges.

Furthermore the consumption of lumber is to a great extent dependent on the rate of activity prevailing in the general construction industry, which had declined steadily from 1926 to 1933. The dollar value of lumber sold in 1933 had declined 73 per cent from the 1929 level, which was itself lower than the 1926 level.

An important factor contributing to the decline in lumber consumption was its replacement by substitutes in many fields. This will be considered in more detail later.

B. Consumers Service Trades

The only Consumers Service Trade in which minimum prices were set was the Cleaning and Dyeing Trade.

Low capital requirements for entry are probably the most outstanding general characteristic of the Service Trades. During boom periods expansion is at an extremely rapid rate. Dollar sales in the Cleaning and Dyeing Trade quadrupled between 1919 and 1929.

Facing the depression with a producing capacity substantially in excess of demand, and with a high overhead percentage, the pressure to cut prices to gain or retain volume was great. (*) The price cutting which would in any event have resulted was seriously aggravated through the entry of a new and aggressive element into the field - the so-called "cash and carry" cleaners. The price of cleaning and pressing standard garments (man's three piece suit or woman's plain dress) declined from an average of well over $1.00 prior to the depression to a prevailing rate as low as 29 cents, with specials frequently offered at 19 cents or even, in extreme cases, two for 19 cents. Prices currently prevailing in New York City are still at this low level.

This drop in prices not only threw many plants into bankruptcy but also reduced the income of tens of thousands of retail tailors to well below the subsistence level, constituting an important sociological problem.

(*) According to a study conducted by NRA in Baltimore, cost of production increased from 28 cents to $2.30 per garment when volume dropped from 100 per cent to 10 per cent of capacity. (In Deputy's Files, NRA)

C. Manufacturing Industries

Of the industries studied, the great majority fall into the category of manufacturing industries. This group is too inclusive to permit the drawing of close parallels, and consequently a further breakdown is necessary.

The most obvious distinction is between industries manufacturing producers goods and those manufacturing consumers goods. This difference is of considerable importance as related to the problems involved in this study.

1. Industries manufacturing producers goods or performing services for producers.

There are certain broad similarities between producers goods industries in general, as contracted with consumers goods industries. Within the producers goods group three distinct sub-groups may be discerned:

a. Industries producing goods for which there is no independent demand

Four of the producers goods industries studied are characterized by the fact that no independent demand exists for their product. These four industries are:

(1) Cast Iron Soil Pipe Industry
(2) Limestone Industry
(3) Malleable Iron Industry
(4) Screw Machine Products Industry

In each case, the entire output is utilized by other industries.

In the Cast Iron Soil Pipe Industry and the Limestone Industry, the Construction Industry constitutes the only product outlet. In the Malleable Iron and Screw Machine Products Industries, the major outlet is the Automotive Industry, with similar industries accounting for the balance of the demand.

In each of these industries the underlying difficulty resulted from the fact that there was no possibility of expanding sales through price reductions.

In three cases, furthermore, the industries were subjected to severe pressure from consuming interests. In the Screw Machine Products Industry, ease of entry into the field aggravated the situation in a manner which will be described later; and in one case, the Cast Iron Soil Pipe Industry, the immediate difficulty arose from a price war started by one industry member.

b. Industries performing services for producers

Of the industries studied, three fall into this category:

(1) Fur Dressing and Fur Dyeing Trade
(2) Throwing Industry
(3) Waste Paper Trade

While in these industries, as in the last group, aggregate demand may be considered as independent of price, this did not constitute the fundamental difficulty. Ease of entry into the field with a consequent large number of relatively small units made each of these trades peculiarly susceptible to pressure for price reductions exerted by powerful buyers.

c. Other producers goods industries

Nine other producers goods industries have been studied:

(1) Agricultural Insecticide and Fungicide Industry
(2) Fertilizer Industry
(3) Asphalt Shingle Industry
(4) Fire Extinguishing Appliances Manufacturing Industry
(5) Hardwood Distillation Industry
(6) Plumbing Fixtures Industry
(7) Paint, Varnish and Lacquer Industry
(8) Rubber Tire Manufacturing Industry
(9) Commercial Relief Printing Industry.

As may be expected in so broad a category, the problems encountered show considerable diversity. However, in each of the nine cases studied, a relatively sharp contraction in volume occurred during the depression. Furthermore, aggregate demand could be increased but slightly through the offering of price concessions. These two conditions appear to have constituted the underlying difficulty in each case.

Taking the group as a whole, however, conditions appear to have been appreciably less severe than was the case with the producers goods industries considered previously. Neither production nor prices were, in general, affected as severely by the depression. This may be traceable to the benefits conferred by even the limited degree of independent demand available.

In one case at least, that of the Asphalt Shingle Industry, whatever price problem existed appears to have concerned the buyer rather than the seller. The price level remained quite stable during the depression, probably due to the fact that the bulk of the product was manufactured under a licensing arrangement.

Other difficulties, however, not encountered in connection with the last two groups, made their appearance. These will be briefly mentioned at this point, and accorded fuller consideration later in this Chapter. In five of the industries (Agricultural Insecticide and Fungicide, Fertilizer, Fire Extinguishing Appliances, Plumbing Fixtures, and Rubber Tire), problems connected with the methods of distributing the product were a contributing factor; and in two of these, Plumbing Fixtures and Rubber Tire, the practices of mail order houses constituted a fundamental difficulty.

Other individual problems, such as the effect of technological changes on the Hardwood Distillation Industry and conflicts of interest between competing factions in the Fire Extinguishing Appliance Manufacturing Industry and Commercial Relief Printing Industry, were also factors.

2. Industries manufacturing consumers goods
This category comprises the following six industries:

(1) Coffee Industry
(2) Wood Cased Lead Pencil Industry
(3) Furniture Manufacturing Industry
(4) Luggage and Fancy Leather Goods Industry
(5) Canvas Goods Industry
(6) Ice Industry

The fundamental distinctions between consumers goods and producers goods industries, from the standpoint of this study, lie in the nature of the market. These include:

(a) In producers goods industries, the buyers of the products are generally skilled and are sawvier in appraising the value of a product and in driving a bargain.

(b) The purchasers of consumers goods are individuals, not companies. Consequently, they are far more likely to be influenced by advertising, to attach great value to brand names, and to be less critical of quality.

(c) In producers goods industries, since demand is dependent on the sale of other products, price concessions generally have little effect in increasing aggregate industry sales. In most of the consumers goods industries, on the other hand, aggregate industry demand is more definitely affected by price.

Of the six industries studied, ease of entry constituted the basic difficulty in all but the Coffee and Wood Cased Lead Pencil Industries. Even in these two there was a well defined conflict of interest between members of different size groups.

Problems connected with methods of distribution were encountered in the Coffee, Wood Cased Lead Pencil, and Furniture Industries. The competition of substitute products was an important factor in the Wood Cased Lead Pencil and Ice Industries.

D. Distributing Trades

1. Retail distibuting trades

Two trades were included in this group -- the Retail Rubber Tire and Battery Trade and the Retail Tobacco Trade. The problem in both of these trades arose from the pressure exerted on indepen-

dent retailers by large mail order houses, chain stores, direct company outlets, department stores, and the like. In each case, favored outlets were able to secure price concessions from manufacturers which permitted them to set selling prices at a level lower than the actual cost to the independent retailer. Insofar as tires were concerned, conditions were especially chaotic, and it was extremely difficult for the independent retailer to compete profitably. In the Retail Tobacco Trade, while the lower costs of the favored outlets were important, the problem was still further complicated by the fact that cigarettes and other tobacco products were commonly sold as loss leaders. In New York City, for example, R. H. Macy (with its slogan of underselling any competitior) and Gimbel's (determined not to be undersold) succeeded between them in battering their prices for cigarettes down to about one-half of the invoice cost per carton.

2. Wholesale distributing trades

Two trades were included in this group - the Wholesale Tobacco Trade and the Paper Distributing Trade. Insofar as the Wholesale Tobacco Trade was concerned, the problem was in part a reflection of the difficulties just described at the retail end. In both trades, however, a more important consideration was the resentment of the so-called "legitimate" wholesalers against encroachments on the field they considered rightfully theirs. The position of the whlesaler necessarily depends on the maintenance of an adequate differential between the price at which he can obtain merchandise and the price at which a retailer can purchase it. This retailer's price, in turn, must be appreciably lower than the minimum price to the consumer. When this structure of differentials is impaired, volume tends to be siphoned toward the cheaper channel, and the position of the orthodox wholesaler becomes precarious. Sales direct through manufacturers to retailer or even consumer, sales through mail order houses and chain stores, and unorthodox methods of wholesaling, such as super-jobbing or sub-jobbing or desk wholesaling, all diver trade from the "legitimate" wholesaler

II. PATTERN OF PROBLEMS ENCOUNTERED

In order to facilitate analysis and to render more graphic the following discussion, a table has been prepared in which these individual maladjustments have been listed under thirteen broad heads. Where, for any industry, one of these heads appears to represent a primary or major source of disruption, this has been indicated by the letter "p". Where the influence was of definite, but secondary importance the letter "s" has been used. Where the proolem was distinctly minor or non-existent, no notation has been made.

Obviously, these valuations are essentially subjective. They represent the appraisal by the writer of the part played by each of these factors in crystalizing the sentiment in each industry into a plea for price stabilization.

Since the drop in volume and price during the depression are in each case major criteria, the extent of these declines have been quantitatively indicated wherever data are available. Dollar volume in 1933 has been expressed as a relative of the corresponding 1929 figure. The index of price during March, 1933 is listed, based on 1929 = 100.

PATTERN OF INDUSTRY PROBLEMS

LEGEND:
Problems of primary or major importance..... p
Problems of definite but secondary importance... s
Difficulties with racketeering or anti-trust laws..... d

		EXTENT OF DECLINE		MARKETS OR RAW MATERIAL SOURCES				CHARACTER OF MEMBERSHIP				DISTRIBUTIVE RELATIONS			UNFAIR CONSUMER PRACTICES		RACKETEERING OR ANTI-TRUST	
		$ Volume 1933 relative to 1929	Price- March 1933 relative to 1929	Pressure of Excess Capacity	Demand Unresponsive to Price	Loss of Markets to Substitutes	Raw Material Price Fluctuations	Ease of Entry	Lack of Cost Consciousness	Factional Problems	Alleged Deliberate Price Wars	Mail Order Houses	Loss Leaders	Other Distributive Problems	Bid Peddling or Equivalent	Consumer Price Dictation	Racketeering	Anti-trust difficulties
NATL.RESOURCES:	Lumber & Timber	27	62	p	s	p												d
CONS.SERVICE:	Clng & Dyeing	46	--	p				p		p	p						s	
PRODUCERS GOODS:	C.I.Soil Pipe	29	78	p	p						p							
	Limestone	14	- -	p	p					s					p			
	Malleable Iron	26	71	p	p										s			d
	Screw Mach Prod	30	--	p	p			p	p						p			
PRODUCERS SERVICE INDUSTRIES	Fur Dress & Dyeng	62	--	s	s			p									s	d
	Throwing	--	--					p	s						p			
	Waste Paper	--	--					p								p	d	
OTHER PRODUCER GOODS INDUSTRIES	Agric Insecticide	56	76	p							p			s				
	Fertilizer	41	64	p										s				
	Asphalt Shingle	43	87	p														d
	Fire Extinguish.	44	--	p	s						p			s				d
	Hardwood Distill.	--	--	p		p												
	Plumbg Fixtures	23	59	p	s							p						
	Paint	59	72	p	s													
	Rubber Tire	39	--	p	s		p					p						
	Com'l Printing	51	--	p	s			p	s		p			s				
CONSUMERS GOODS INDUSTRIES	Coffee	--	--		s		s				p		s	s				
	Wood C.Lead Pencil	69	--	s		p					p			s				
	Furniture	31	76	p				p				s		s				d
	Luggage	36	69	p				p	s									
	Canvas Goods	74	--					p			p							
	Ice	66	--	p		p		p									d	
RETAIL DISTRIBUTION	Retail Tire	38	--	p								p						
	Retail Tobacco	--	--										p					
WHOLESALE	Whlsle Tobacco	64	--	s							s		p	p				
	Paper Distg	--	--	s							p			p				d

Where the efforts of industry members to improve their position has resulted in racketeering or in conflict with antitrust laws, these facts have been noted as pertinent sidelights.

In examining these specific causes of dislocation, a very definite general pattern is revealed. The problems encountered in each case bear a relation to the following factors:

(1) The nature of the industry's markets or raw material sources.

(2) The character of the membership of the industry as affected by such considerations as ease of entry and as affecting its internal organization, including such items as size of members, their cohesiveness, their identity of interest, etc.

(3) The distributive relations of the industry (e.g. whether goods are distributed through wholesalers or direct, whether competiting channels of distribution exist, etc.).

(4) The degree of pressure consumers are able to exert on prices.

These groups will now be considered in the order named.

A. Excess Capacity and High Overhead

First in importance and most nearly universal was a tremendous excess of producing capacity over effective demand. Where, as frequently was the case, this was coupled with high overhead charges the pressure on individual business men to seek to expand their sales through reducing prices was extreme.

In the majority of industries, of course, this excess capacity represented primarily the difference between the rate of activity prevailing in 1929 and that in 1932 and 1933. In those industries dependent upon construction (Lumber, Cast Iron Soil Pipe, Limestone, Asphalt Shingle, Plumbing Fixtures), the decline had antedated the depression, commencing around 1926, and in most of these the contraction was exceptionally severe. A few industries had been geared to a war peak that had never since been equalled (Lumber, Malleable Iron, Screw Machine Products). In a few more, the decline was due to more fundamental causes, the competition of substitute products, but this problem will be considered under another head.

The effect on price of desperate efforts to reduce overhead burden by utilizing excess facilities has already been described, and need not be here repeated.

B. Difficulty of Increasing Sales Through Price Concessions

In many industries, of course, drastic cuts in price, while they may entail heavy financial losses to the members, may have the important effect

of increasing demand and retarding the decline in production and employment. In certain cases, however, markets could not be expanded appreciably through price reductions.

The most extreme example of this condition is noted in the four producers' goods industries which have been classed as lacking any independent demand for their product (i.e., Cast Iron Soil Pipe, Limestone, Malleable Iron, Screw Machine Products). The exceptionally severe drop in sales volume experienced by these four industries (the least drop was 70 per cent and the worst 86 per cent), is directly pertinent.

In industries of this character aggregate sales volume at any time may be considered as constant. Demand is entirely dependent on the rate of activity in other industries, e.g., on the Construction Industry for the Limestone and Cast Iron Soil Pipe Industry, and on the Automotive Industry and similar industries for the Malleable Iron and Screw Machine Products Industry.

Furthermore, the price of the products of each of these four industries forms but a small fraction of the total cost of the finished article. Consequently in these and in similar cases aggregate industry demand can not be stimulated through price reductions. Any one concern may, it is true, by lowering its price, secure for the moment a larger share of the total volume available, but such an increase must necessarily be at the expense of some other member or members. These, in turn, are unlikely to view their loss with equanimity. The price cut will be met or even bettered and volume again redistributed. The net result will be a lower price for the industry as a whole with no increase in volume that might in part compensate.

It might, of course, be contended that if the price level of not only one of these industries but of all the industries manufacturing the ingredients of the finished article were simultaneously lowered, the demand for the final product might be appreciably stimulated. The possibility of co-operative action of this sort, however, appears too remote in application to be of any value as a solution to an immediate problem.

While it is in the four industries mentioned that this problem manifests itself in the most extreme form, it is also present to a substantial degree in all the other producers' goods industries covered, and in the Coffee Industry in the consumers goods group.

C. Loss of Market to Substitute Products

In a few cases the low rate of capacity utilization reflected not merely the temporary effect of the general business depression but revealed also a loss of a portion of the market to substitutes. Here the severity of price decline reflected not only the temporary difficulties resulting from the general business depression but also the action of forces more specific and more inexorable.

In the Lumber and Timber Products Industry the substitution of other building materials for wood in general construction; of metal for wood in furniture; and of fiber board for wood in boxes and crates, were important factors contributing to the decline in lumber consumption. In the Hardwood Distillation Industry conditions were even more serious; coke was increasingly replacing charcoal in the manufacture of pig iron; synthetic

means had been developed for manufacturing methanol and calcium acetate; and even the domestic market for charcoal had been invaded by the competition of softwood charcoal and such items as gas appliances.

In the Wood Cased Lead Pencil Industry the increasing popularity of fountain pens, mechanical pencils, typewriters, bookkeeping machines and the like had resulted in a substantial contraction of demand.

In the Ice Industry sales had narrowed due to the increasing use of mechanical refrigerators. The introduction of dry ice was also a contributing factor.

D. Fluctuations of Raw Material Prices

In two cases violent fluctuations in raw material prices represented important problems and contributed to price unsettlement. In both of these cases raw materials were entirely imported.

In the Rubber Tire Manufacturing Industry it is necessary for manufacturers to maintain substantial inventories of crude rubber. When, as occurred during the depression, the price of crude rubber underwent a sharp and long decline, losses on inventory were extremely serious. Furthermore, during a rising price cycle for crude, manufacturers who have bought large stocks at or about the lows can, for a considerable period, enjoy lower operating costs than competitors who were not so fortunate. They are, consequently, able to price their product at a level the others can not meet, with resultant price unsettlement.

In the Coffee Industry a similar problem existed but it was apparently not quite so acute. In this industry, in fact, some units claimed that their profit was obtained primarily through speculation in green coffee, with the roasting business secondary. None the less, the costs of individual concerns showed considerable differences, depending upon the levels at which they had purchased green coffee, with corresponding perturbations reflected in the price of roasted coffee.

In neither of these cases does it appear to be possible to hedge inventory purchases through sales of futures because of the lack of an adequately developed speculative market for the commodity.

IV. PROBLEMS ARISING FROM THE CHARACTER OF INDUSTRY MEMBERSHIP

A second major group of problems may be classed as those arising within an industry, related primarily to the character of its membership. The factors so far considered are external, and to a great extent inevitable. But, as may be inferred from the theoretical discussion contained in Chapter II, market conditions are not the sole determinants of price. Price may be maintained at a level higher or driven down substantially lower than would result from the operation of market forces alone.

A. Ease of Entry

Where capital requirement for entry is relatively high, and where as a consequence the number of competing units is limited, their opportunity for exerting some degree of control over the price level is frequently favorable. This may, but does not necessarily, imply co-operative, or even

collusive, action. Price leadership is not an uncommon phenomenon. The majority of concerns may be content to follow the price policy of some dominant unit or units, knowing that were they to start cutting prices they would shortly be bested at their own game. In some cases, it is true, secret concessions are granted in the hope of securing added business and yet avoiding reprisals, but even then the actual as well as the nominal price level may remain well above what market conditions might otherwise dictate.

Where, on the other hand, capital requirements are relatively low and entry is easy, a large number of small units is the usual corollary. "Co-operative" action to maintain prices is difficult to achieve. Price leadership is less frequent and less effective, since one of the many small units is always likely to upset the apple cart. Competition, through being more widespread, is usually more intense. Management is frequently less competent, financial stability poorer, bankruptcies and resultant changes in ownership more frequent in proportion to the number of units. In cases of this sort prices are rarely if ever higher, and are commonly driven far lower, than the demand situation taken alone would warrant.

Among the industries studied, in which this latter situation is apparent, were the Cleaning and Dyeing Trade, the three producers service industries (Fur Dressing and Fur Dyeing, Throwing and Waste Paper), the Screw Machine Products Industry, the Commercial Relief Printing Industry, and four of the six consumers goods industries (Furniture, Luggage and Fancy Leather Goods, Canvas Goods, and Ice). In the Canvas Goods Industry, as an extreme example, it was alleged that all the capital needed was "$50. for a sewing machine and $2. for a marriage license to get a wife to do all the work." (*)

B. Lack of Cost Consciousness

Code proponents frequently laid a large portion of the pricing problems of their respective industries at the door of lack of cost knowledge on the part of members. In the Screw Machine Products Industry, for example, evidence was introduced at the Public Hearing that bids submitted in accordance with Government Purchase Office specifications by seven concerns showed a range from 35 cents to $8.50 for the same article. It was alleged that so wide a discrepancy could only result from utter lack of cost knowledge on the part of some concerns.

The desirability of pricing products on the basis of accurately determined costs has long been a favorite thesis of cost accountants and trade association executives. It was implicit in the statements made by Mr. Harriman and Mr. Stevenson from which quotations have been cited. At almost every public hearing held on proposed codes some reference was made to the evils attendant on lack of cost knowledge. A critical appraisal of this thesis will be included in a later chapter. It may, however, be stated at this point that where industry members are cost conscious, and endeavor to relate the selling prices of their products to their costs of production as computed by orthodox methods, the general price level prevailing may be maintained somewhat higher than would otherwise be the case.

(*) Transcript, Public Hearing on the Canvas Goods Industry, Dec. 12, 1934, pp. 75-96

C. Factional Problems

The second class of difficulties resulting from the internal structure of an industry are those in which it is divided into distinct factions, each struggling to increase its share of the total market.

In many cases factional distinctions are based primarily on size. In the Coffee Industry, for example, three large corporations account for over 35 per cent of the volume of the industry. These companies all operate at relatively low cost. The largest of these three companies is fully integrated, covering all functions from roasting to retailing, and possesses exceptional cost advantages. These three, furthermore, all have created a distinct consumer preference for their products through extensive advertising campaigns.

The small companies, at a disadvantage either on a price or on a prestige basis, found their markets increasingly restricted.

The problem in this industry is further accentuated by the fact that for each of these large companies coffee constitutes a relatively unimportant sideline. They are consequently in a position to price their product almost independently of its cost, absorbing any loss through profits on other operations.

The condition in the Agricultural Insecticide and Fungicide Industry presents a certain parallel, in that here again the largest unit in the industry, the General Chemical Company, derives but a small fraction of its income from the sale of calcium and lead arsenate. It was price cutting by this company that created the immediate problem in this industry.

Where there are three distinct size groups in an industry, very large, intermediate, and very small, the intermediate may labor under a severe disadvantage. Thus, in the Canvas Goods Industry, there are a few major companies producing for a national market, and possessing distinct cost advantages in the purchase of raw materials and in their manufacturing operations. At the other extreme are some 2500 family, handcraft shops having no direct out of pocket outlays except for raw materials; they are able, consequently, to sell for any price that will yield a small return for their labor. The companies of moderate size find it extremely difficult to compete profitably with either group since, unlike the handcraft shops, they have overhead and labor charges to meet, while on the other hand they can not match the costs of the very large concerns.

Similar conditions exist in the Fur Dressing and Fur Dyeing Trade, which comprises one dominant unit handling between 20 and 30 per cent of the total industry volume, a number of concerns of moderate size, and a considerable group of very small units frequently operating on a co-operative basis. The intermediate group can not match either the prestige or the efficiency of the one large company, while its members must, on the other hand, pay their labor at union rates which the co-operative shops are under no necessity to observe.

In the Commercial Relief Printing Industry a few large companies have moved their plants to rural districts to avoid the necessity of paying union wages and high rentals, and also to escape other labor problems.

At the other extreme are a great many so-called "hall-bedroom" shops, one man concerns, or the equivalent. The remainder of the industry is again caught between the upper and the nether millstone.

A somewhat different problem arises where a group long dominant in an industry finds its position threatened by inroads from new and aggressive entrants. In the Cleaning and Dyeing Trade the old line cleaners were suffering very severely from the competition of the new cash and carry operators.

In the Fire Extinguishing Appliances Manufacturing Industry manufacturers who maintained extensive research and development departments and incurred heavy expenses for advertising resented the competition of units whose overhead charges were much lower.

The Wood Cased Lead Pencil Industry had long been dominated by four big companies. Starting about 1928 a group of relatively small companies began to compete aggressively, through price reductions and alleged shading of quality, and succeeded in winning a substantial share of the markets previously enjoyed by the "Big Four."

D. Price Wars

Allegations of price wars were, of course, the rule rather than the exception. In only two manufacturing industries, however, did there appear to be clear-cut evidence that a deliberate attempt by one or two companies to profit at the expense of the rest of the industry was the immediate cause of price decline to a level lower than market conditions would otherwise warrant. In both these cases, the Agricultural Insecticide and Fungicide and the Cast Iron Soil Pipe Industries, the condition complained of became critical shortly after the code was approved.

V. PROBLEMS ARISING FROM DISTRIBUTIVE RELATIONS

The next major group of difficulties to be considered arise from the manner in which the product is distributed.

A. Competing Channels of Distribution - Mail Order Houses

When the products of different manufacturers are sold on the same market, retail prices to the consumer must necessarily form the ultimate basis of competition. The manufacturing cost of one concern may be lower than that of another, but if its cost of distribution is greater it may be placed at serious disadvantage. Price pressure is transmitted from the retailer back through the wholesaler to the manufacturer. Consequently competing methods of distribution may be major disturbing factors in the price structure.

Probably the most outstanding unsettlements traceable to distributive problems arise when mail order houses and chain stores are an important factor. In the Plumbing Fixtures Industry for example, a few manufacturers distribute through mail order houses while the majority utilize the orthodox wholesaler to retailer arrangement. The mail order houses have been consistently cutting their retail prices. These cuts must be met by re-

ductions in the prices charged to wholesalers by other concerns. In this case intermittent price wars starting in 1928 have not yet ended. Prices have dropped continuously from that date through 1935.

A similar condition exists in connection with the Rubber Tire Manufacturing Industry where mail order houses, chain stores, direct manufacturers outlets, oil company stores, and independent retailers are competing. The resulting chaotic retail price structure is reflected back to the manufacturers.

In the case of the Furniture Industry the practices of mail order houses also constituted a major source of complaint.

In the Wood Cased Lead Pencil Industry, chain store distribution of pencils was resented by manufacutres who utilized more orthodox channels.

B. Other Distributive Problems.

Other difficulties complained of by industry members arising from the methods of distributing products included the following:

(1) In the Agricultural Insecticide and Fungicide Industry the practice of selling on consignment and of guaranteeing against price declines were considered objectionable by industry members.

(2) In the Fertilizer Industry members were dissatisfied with the pricing policies of their distributors - apparently a failure to maintain resale prices - and changed over to the agency system of distribution during the code period. This change has persisted since the lapse of the code.

(3) In the Coffee Industry certain retailers utilized coffee as a loss leader, a practice considered objectionable by the industry.

VI. PROBLEMS ARISING FROM CONSUMER PRESSURE

A. Bid Peddling

The last group of problems to be considered are those which arise where consumers, by means of alleged unfair tactics, are able to exert strong pressure on the price structure. The producers service industries and the industries manufacturing producers goods that have no independent outlets were extremely vulnerable in this regard. Especially was this true where the industry comprised many small units. For example, in the Screw Machine Products Industry buyers were accused of pitting concerns which had no accurate knowledge of their cost of production against concerns with known costs, forcing all prices down. In this industry and also in the Limestone, Malleable Iron and Throwing Industries bid peddling was apparently the rule rather than the exception.

The following was the gist of a description of the bid peddling pro-

cess as given the writer by a member of the Limestone Industry:

"When a project is advertised, general contractors ask for bids from the limestone sub-contractors. In submitting their general bids, they usually shave about 20% off the lowest bid submitted by any limestone fabricator. Then, if they get the job, they shop around, playing one sub-contractor off against another, until they get the price down where they want it. Of course the fabricator has only one recourse, he goes to his workmen and says 'See here, I can get this job if you play along and kick back some of your wages.' And since they'd rather have work at lower pay than none at all, they usually consent. Fabricators who won't resort to such tactics are left out in the cold."

B. Price Dictation.

In one case, the Waste Paper Trade, an important paper board mill purchased a controlling interest in a large waste paper concern and installed its own purchasing agent as manager. The price set in this captive mill became the ruling price for waste paper. In this case consuming interests were virtually able to fix prices at any level desired.

VII. ATTEMPTS AT CONTROL THROUGH COMBINATION OR COERCION

Efforts by industry members to exercise a greater degree of control over their price structure are, of course, extremely common. In seven of the industries studied such efforts brought them into conflict with the anti-trust laws. In one of these seven, and in three additional cases, racketeering was resorted to in a desperate effort to remedy conditions.

VIII. PRICE THE COMMON DENOMINATOR.

All these diverse problems had one thing in common. They all in one way or another, separately or jointly, affected the price structure. Low price levels were the immediate expressions of each of these maladjustments which were themselves traceable, as has been indicated, to more fundamental economic ailments.

In each case, however, at least one of the remedies attempted was directed at this immediate symptom. Concurrent controls, it is true, were also sought or attempted, but in every one of these industries some effort was made to ameliorate conditions by directly controlling price competition.

The devices used in these efforts included, as has been indicated, direct minimum price fixing, price control through the declaration of emergency, and cost protection. Actual experience with each of these devices will now be considered.

CHAPTER VI

PRICE REGULATION THROUGH DIRECT MINIMUM PRICE FIXING

I. NATURE OF THE DEVICE

The most direct and uncompromising means of limiting price competition attempted under the codes was an explicit grant of power to the Code Authority or a similar agency to prescribe minimum price schedules. In most cases such schedules were to become effective only after N.R.A. approval, but this requirement was not universal. Nor was there any general requirement that price schedules be predicated on an analysis of costs.

II. EXTENT OF ITS APPLICATION

Because of their drastic nature such provisions were restricted to cases deemed extremely exceptional. Only twelve basic and no supplementary codes provided such grants of power. These codes fall almost entirely into three industry groups.

(A) Transportation Industries:
- Domestic Freight Forwarding
- Inland Water Carrier Trade
- Motor Bus Industry

(B) Natural Resources Industries:
- Petroleum
- Bituminous Coal
- Lumber and Timber Products Industry

(C) Consumers Service Trades:
- Cleaning and Dyeing Trade
- Laundry Trade
- Barber Shop Trade
- Shoe Rebuilding Trade

(D) Others:
- Wood Cased Lead Pencil (*)

(*) See Report No. 40-D, p. 8, Post Code Analysis Unit, Research and Planning Division; N.R.A. files. The tabulation there given has been extended by the inclusion of the Lumber and Timber Products Industry, in which the nature of the provision was later altered, and the Service Trades, in which the provisions were suspended by Executive Order of May 26, 1934. The Wholesale Coal Code, included in the tabulation in 40-D, has been omitted since its prices were directly based on those in the producers code. The Graphic Arts Code, also included in the tabulation, has been omitted because direct price fixing was only one of several alternatives devices it includes, with cost protection apparently constituting its proper category.

Even this rather limited roster was reduced by the fact that minimum prices were never permitted to go into effect in the Petroleum and Wood Cased Lead Pencil Industries or in the Laundry, Barber Shop and Shoe Rebuilding Trades.

Furthermore the price provisions were stayed in the Cleaning and Dyeing Trade on May 26, 1934 and in the Motor Bus Industry on January 10, 1935. The Lumber and Timber Products Code was amended on July 16, 1934, to place price control on an emergency basis, but this merely involved a nominal revision without any real modification of principle. But lumber price control was abandoned on December 22, 1934.

At the time of the Schechter decision, therefore, fixed minimum prices remained in effect in only three codes; Bituminous Coal, Domestic Freight Forwarding and Inland Water Carrier. It is therefore apparent that the use of this device by N.R.A. was extremely limited from the start and that its application was progressively restricted to the point of virtual abandonment.

Actual N.R.A. experience with direct minimum price fixing has been studied for one natural resource industry, the Lumber and Timber Products Industry, and one consumers' service trade, the Cleaning and Dyeing Trade. The conditions leading first to the approval and then to the nullification of this type of control in the Wood Cased Lead Pencil Code have also been reviewed.

It would have been highly desirable to have also covered experience in the Bituminous Coal Industry, but information concerning this code was not available in time to permit its use. In the Transportation Industries, price control partakes essentially of the character of public utility regulation, which has long been considered a proper function of government and appears to fall outside the scope of this study.

III. LUMBER AND TIMBER PRODUCTS INDUSTRY

Code experience in the Lumber and Timber Products Industry will first be considered.

The code for this industry was the ninth approved by N.R.A. It was signed by President Roosevelt on August 19, 1933.

The industry asked and received probably the broadest grants of power over the price of its products included in any approved code. Article IX of the code provided that the Code Authority should "establish and from time to time revise minimum prices f.o.b. mill to protect the cost of production of items in the several classifications of lumber and timber products." Such determination was to be made with due regard to the maintenance of free competition among species, divisions, and sub-divisions of the industry and with products of other industries and other countries. The criterion of price was to be the current weighted average cost of production. The items to be considered in computing cost were broad and inclusive. Even interest on indebtedness and depreciation on odle as well as on operating facilities were to be taken into account.

The code provided for special treatment of small mills through the allowance of a differential for their products, and for the establishment of lower minimum prices for items of inferior quality.

It further included an elaborate system of customer classification, specifying maximum discounts to be allowed to various types of customers. Uniform terms of payment were stipulated and guarantees against price decline were banned.

Price control was to be supplemented by production control. The Code Authority, after a study of possible future demand, was to set a quota for the entire country, the quota to be divided among the various divisions and sub-divisions, on the basis of past output. The divisions and sub-divisions were to make allotments to the various mills under their respective jurisdictions, according to a formula set up in the code.

These two controls the designation of minimum prices and the restriction and allotment of production were the principal devices by which it was sought to restore profitable operation to the industry.

As indicated by the public hearings, many of the code administrative agencies were well established associations prior to the code, and for many years had been working on the problem of price control. Consequently, as soon as they were organized as official agencies of the Code Authority, minimum prices were adopted by 27 out of a total of 36 divisions and sub-divisions. These prices took effect at various dates between November 7 and December 12, 1933. Later additional divisions, sub-divisions and organized Groups, added to the code by amendment, issued price bulletins. In some of the divisions the minimum prices were on a basis other than the f.o.b. mill basis specified in the code. The Southern Pine Division had certain basing points which resulted in the addition of charges to the f.o.b. mill prices. The Southern and Appalachian Hardwood Sub-Division prices were on a delivered basis. The Oak and Maple Flooring Divisions also used basing points in calculating delivered prices. (*)

The minimum prices promulgated under the Lumber Code had no close relation to cost, particularly at first, nor does it appear that they succeeded in meeting the code stipulation that they be established with due regard to the maintenance of free competition with the products of other industries and other countries and to the encouragement of the use of said products. The prices on all major items were originally announced in bulletins of the Lumber Code Authority dated October 28th to November 13th, 1933, before data in response to the Code Authority's cost questionnaire were available.(**) The Code Authority was forced to eke out the meager cost data available to it in the early days of code operation with as intelligent guesses as it could make. What actually seems to have happened is that the general level of prices prevailing in the fall of 1933, which was about 50 per cent higher than the lows of the early part of that year (see Chart I), was taken over

(*) History of the Lumber and Timber Products Code, page 325.

(**) Orally from W. T. Yost. (Economic Adviser on the Code)

more or less intact as the level which should be continued and enforced. These figures were revised in minor particulars in price bulletins issued in January, 1934, but the bulletins were still based on fragmentary data. The divisions with minimum prices contained approximately 14,000 operators. Of these some 860, or about 6 per cent, furnished usable cost data. In some of these the coverage was very spotty. For instance, from the Southern and Appalachian Hardwood Sub-division, with 2,309 operators, no cost reports were received. The Southern Pine Division, with 4,500 operators, furnished 76 reports. In some divisions, the coverage in terms of production was fair, due to the fact that the large operators reported more adequately than did the small ones. (*) The periods covered were not uniform as between divisions. Some divisions covered July and August, some August and September, and some September and October. (**)

Early in 1934, on account of vigorous protests against lumber prices at a lumber price hearing on January 9, 1934, the Research and Planning Division set out to check the data on which the Lumber Code Authority was seeking to substantiate its minimum prices. The code gave the Division no power to modify the prices in any way or even to make recommendations, but it felt that unless it made some attempt to find out whether the promulgated minimum prices had a direct and substantial relation to a reasonable computation of costs and to try to influence the Lumber Code Authority to keep the prices thus related to costs there could be no hope of defending the prices against hostile court action. With this in mind the Division began to try to check up on the Lumber Code Authority's computation of costs. The Lumber Code Authority upon request submitted to the Divison certain data on costs in the Western Pine Division. These data, as well as data later submitted for other divisions following the emergency declaration in July, indicated that with minimum prices set at an obviously high level in advance of obtaining cost data on which to base them, the marshalling of cost data, from the industry's point of view, had become a process of demonstrating that costs were as high as the prices. In thus substantiating the minimum prices the Lumber Code Authority was aided considerably by the inclusive nature of the cost formula written into the code, as quoted above. Thus it was possible, with code sanction, to include certain items which N.R.A. did not regard as proper components of a minimum price, such as cost of carrying owned stumpage in excess of reasonable amount, depreciation on excess capacity to produce, interest on excessive capitalization, on borrowings resulting from uneconomic organizations, and on capital used for mills "capable of operation" as well as for those actually in operation, losses on trade accounts carried over from pre-depression days, and full administration costs, including such items as salaries based on pre-depressions conditions.

In the spring of 1934 the Administrator announced the amount which might be charged for carrying stumpage, which eliminated losses on timber speculation as an element of cost. Also the industry agreed to compute depreciation for minimum-price purposes on the basis of only 65 per cent of total capacity. Moreover, as indicated above, the ad-

(*) History of the Lumber and Timber Products Code, page 326
(**) Report on cost production prices by F. M. Burnham, May 6, 1935, main memorandum, page 2.

justment of prices among species and divisions to maintain "free competition" among them meant that part of the elements of depreciation and standing-timber charges were omitted in computing costs of some of the species. Most of the reported costs were so-called "ceiling" costs, including the two cost elements named. Sixty-five per cent of capacity for figuring depreciation was probably high, considering that on the average not more than 25 per cent of capacity (as computed by comparing the 1932 lumber cut with the highest cut in any recent year) was being used or was likely to be used in the near future. The Research and Planning Division stated that in some instances the use of the straight line basis of computing depreciation provided for in the code resulted in operators reporting depreciation per thousand board feet as high as 200 per cent in excess of their depreciation per unit as figured by their customary methods.*

In May 1934 the Executive Officer of N.R.A. made a report to the Administrator to the effect that the cost-protection formula in the code contained elements of profit, that the existing delivered prices and basing-point prices were in violation of the code, that certain recent price increases ought to be set aside, and that all the prices ought to be reduced by 20 per cent pending a recomputation of costs on the basis of a revised formula. Apparently, in some unexplained manner this report got into the hands of the Lumber Code Authority. The Administrator took no action on it.**

By the early summer of 1934 price violations had begun to take place in considerable volume. It was evident that neither the courts nor the N.R.A. would back up the code authority agencies to the extent of actually punishing the violators. The doubtful legal status and questionable reasonableness of the basis for computing the prices were primarily responsible for this. The Lumber Code Authority and N.R.A. held a series of conferences, trying to find some means of saving the code price structure. At one of these conferences the Research and Planning Division stated that in its opinion the minimum prices were illegal because they had not been approved by the Government and because the code did not provide for governmental review of them. Shortly after that a deputation from the lumber industry came to the N.R.A. offices. They requested an immediate statement by N.R.A. validating the minimum prices. The Division Administrator orally requested the Research and Planning Division to approve the issuing of such a statement. The latter refused, on the ground that it had had no opportunity to study the computation of the costs behind the prices. The Division Administrator then obtained the approval of the Administrator and the requested statement was issued on June 21, 1934. It was not submitted to any other advisory board.*** But this validating

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(*) D. N. Burnham's memo of August 3, 1934 to Peter Stone, last paragraph, contained in his cost protection report of May 6, 1935.

(**) Lumber study report (Peter Stone), and Code History, pp. 329-330.

(***) Orally from Peter Stone.

of the prices by decree did not substantially stem the rising tide of price violations. The Lumber Code Authority sought other means of furthering the enforcement of minimum prices.

It happened that in the latter part of the spring orders and shipments had begun to drop at a rapid rate as compared with the corresponding weeks of 1933. The Federal Reserve Board index on lumber production stood at 31 in June, 1934 as against 38 in June, 1933. Some 5,000 new saw mills had begun operation under the code. Stocks of the common grades of lumber were piling up at a rate that alarmed many members of the industry. The Lumber Code Authority suggested that this situation might well indicate the existence of an "emergency" under the terms of Office Memorandum No. 228, and the N.R.A. acceded to the suggestion. The emergency was declared on July 15th*, practically coincident with an amendment to the code authorizing the declaration of an emergency and the fixing of "reasonable" minimum prices by the Administrator. As in the price provisions first adopted, provision was made for granting certain exceptions to operators whose products were substantially below standard grade.

The declaration of emergency in this instance and the promulgation of minimum prices amounted to nothing more than a device to endow the already existing minimum prices with a presumably superior legal validity. Since no adequate cost data were available and since there was no time in any case to make a careful study of costs, the old price schedules were continued by N.R.A. practically intact, except that out of deference to the Administration's recently announced housing campaign all housing items, by agreement with the industry, were reduced about 8 per cent. The new schedules took effect July 21st. Thereafter no changes and no new prices on unlisted items were to take effect without the approval of the Division Administrator and the Legal and Research and Planning Divisions.**

The emergency order directed the Research and Planning Division to make a study of the costs on which the prices were based. The Lumber Code Authority immediately turned over to the Research and Planning Division all its individual cost reports covering the months of January to March inclusive, 1934. The Division promptly reached the conclusion that the prices were not properly related to the data and that the data needed a great deal of amplification.*** From then until the end of minimum prices in December the Division was in constant correspondence and contact with the Lumber Code Authority in an effort to elicit adequate comparable information on cost of production. The Division does not appear to have been satisfied that the data submitted were adequate.

(*) Administrative Order No. 9-46.

(**) History of the Lumber and Timber Products Code, pp. 335-336.

(***) History of the Lumber and Timber Products Code, pp. 335-336.

Price control turned out to be unmanageable. David T. Mason, Executive Officer of the Lumber Code Authority at the lumber price hearing in December, 1934, pointed out that 97 of the 128 divisions, sub-divisions, and organized groups which were under the lumber code in the latter part of 1934* had price control, applied through an aggregate of 613 pages of price bulletins containing prices on about 81,000 different items produced. Each item had various prices on it, due to the system of discount differentials with the result that there were some hundreds of thousands of separate and distinct prices. It turned out to be humanly impossible to figure out all these prices in a manner that would preserve anything like a logical or equitable interrelationship among regions, among species, and among types and amounts of service rendered by different distributing channels, as well as to take cognizance of variations in cost between individual operators due to variations in quality and refinement of product, seasoning, size of establishment selling facilities, good will, amount and type of distributors' function performed, and other matters. Some of the difficulty of achieving equitable price relationships in shown by the fact that 34 administrative orders pertaining to exemptions and stays from the cost-protection provisions of the code were issued. Thirty-one of these were approvals and 3 denials.

Specific difficulties in administration included:

(1) Difficulties with differentials between different types of mills.

In the latter part of 1933 the large mills were so dissatisfied with what they considered the overgenerous differential to small mills that the differential was decreased in January, 1934. This brought forth a howl of protest from the small mills, which in the South particularly, greatly exceeded the large mills in number. Hearing were held in April in the South with the result that the old differentials were re-established. The large mills now were dissatisfied again. Later some of them were placated by the granting of permission to sell a large accumulation of lower grades at the same price permitted to the small mills. Independent of this problem of a differential for small mills selling finished lumber was the problem of a differential for mills, primarily small Southern mills, which did not complete the manufacture but sold their whole output regularly to so-called concentration yards. These concentration yards carried out certain finishing processes, such as planing and sorting, and marketed the finished lumber in much the same way as large individual mills. In March 1934, for the first time mills selling to concentration yards were permitted to sell at a discount off scheduled minimum prices. This discount amounted to 15 to 50 per cent. Until that time they were discriminated against in the minimum price structure, as was stated by the Federal Trade Commission in a report it rendered May 7, 1934, after a field investigation in the South. Also there was a feeling among certain plants which purchased lumber and fabricated it further that they were discriminated against compared with fabricating plants owning their own sawmills,

(*) Various divisions and sub-divisions were added to the lumber Code after it first went into effect and many of these split up into smaller groups.

because the latter could produce their lumber at considerably less than the price at which the plants without sawmills must purchase theirs. This, of course, to a certain extent, was evidence that the minimum price of lumber was in excess of cost. There was dissatisfaction with the failure of export prices to be lined up properly with domestic prices. Frozen stocks tended to develop in certain items of lumber. Stocks showed a tendency to pile up in the hands of the manufacturer, although previously the distributor had borne much of the burden of carrying them. Some manufacturers stated that since the adoption of fixed prices it had become harder for them to negotiate bank loans.(*)

(2) Protests against freight equalization.

Numerous protests were received by the Lumber Code Authority and N.R.A. as the result of freight equalization applied in connection with the establishment of delivered prices. These protests came especially from the Southern Pine Territory. In establishing basing points the Southern Pine divisional agency had attempted to equalize delivery costs at the principal market centers. Those operators who for many years had enjoyed a preferential rate into such markets and who found that through equalization they were placed in direct competition with all producers in the region, wherever located, immediately protested the equalization plan. The Southern Rotary Cut Lumber Division's prices included deliveries to all points. There were large and apparently unrelated jumps in prices between states. Substantiation by the Lumber Code Authority of these large differentials was never received by N.R.A. although they were the subject of many complaints.(**) The Southern Pine Sash and Door Manufacturers Association objected to a delivered-price system whereby their own doors sold higher at Atlanta, Georgia, than did Douglas fir doors from the Pacific Northwest. Certain oak flooring producers protested against establishing a price of oak flooring at their own place of business $9.50 per thousand feet higher than the price at Memphis, the principal market.

The industry later increased the number of basing points, but complaints continued against interference with established markets through basing points. N.R.A. never received sufficient information nor had it the time or personnel to make a thorough study of the incidence and effects of basing points under the code.

(3) Many problems arose which were reflections of difficulties in the wholesaling and retailing of lumber products. Fixed maximum discounts to wholesalers off the f.o.b. mill prices were prescribed under the code; in most divisions of the industry they amounted to 8 percent. The limitation of the discount to a fixed maximum was necessary for the enforcement of the whole minimum price system, particular-

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(*) Code History, pages 330-331; Lumber study report; data from Peter Stone; transcript of lumber price hearing, December 11, 13, 1934.

(**) Code history, page 332.

ly in view of the fact that the performance of the wholesaler's function in the lumber industry is divided between manufacturers with wholesaling departments and independent wholesalers. In order to maintain this structure it was necessary to control both wholesalers and retailers. Wholesalers refused to assent to being included under the Lumber Code because of the lack of a drastically restrictive definition of the wholesale trade. N.R.A. declined to approve any of the proposals advanced for such limitation, or for the rigid fixing of discounts for each level. As a result, uniformity of manufacturers prices did not mean uniformity of price to the consumer. Since price competition is based upon prices to the consumer, any inequalities were reflected back to the manufacturers and reacted against the whole price structure. It was contended by persons familiar with the code that, without jurisdiction over the wholesale distributor, compliance with minimum prices was impossible of attainment.

(4) There was a considerable amount of sweetening of grades, or shipping a higher quality of lumber than was previously shipped under the same grade classification, thus circumventing price control. Where minimum prices are set on a relatively unstandardized product like lumber the producer has a considerable latitude in varying his product without violation of the minimum prices. Uniform prices binding on all members of a given industry eliminate one principal basis of competition in that industry. To make an effective sales appeal and yet, nominally at any rate, comply with minimum prices, a given concern must now offer its customers better quality for the same money than its competitors. So price competition becomes quality competition. This "sweetening" of grades took both the form of improving the quality within the customary range of quality for a given commercial grade and the form of shipping lumber of a commercial grade definitely higher than the one invoiced. The latter form was, of course, in outright violation of the code.

(5) Secret rebates were given in the form of presents and of lowering transportation charges, particularly ocean freight and trucking charges.

Under such conditions of "chiseling" and of incomplete code jurisdiction as are described above, it is not surprising that there was trouble and dissatisfaction everywhere. Jealousy existed between different regions and different species. There was a feeling that small-mill differentials were inequitable and that certain types of mill cutting a low grade of lumber were discriminated against. It became evident that the established minimum prices had little connection with cost of production and that in their very nature it was impossible for them to do so.

Consumers protested violently during the whole era of fixed lumber prices. Their complaints, along with the complaints of certain dissatisfied members of the industry, brought about the first price hearing of January 9, 1934. Would-be home builders were most vocal at first. In the summer of 1934 the furniture industry as a unit joined the protestants. Compliance with minimum prices had been fairly good up to about June 1934, but from then on violation assumed

serious proportions, in spite of N.R.A.'s announced intention to enforce minimum prices rigidly after the emergency declaration in mid July. In the latter part of the summer revolt against minimum prices broke out within the industry itself. During the fall N.R.A. received telegrams and petitions from over a hundred hardwood mills protesting against minimum prices. Many hardwood mills had been put on record as being willing to sell to the Fisher Body Company at less than minimum prices. In the softwood field the principal protest came from the Northwest where on October 30th the West Coast Lumbermen's Association, one of the leading associations of the lumber industry, voted against continuance of minimum prices. In a poll of all lumber manufacturers in the Northwest undertaken in August by Crow's Pacific Coast Lumber Digest, 81 percent of the fir manufacturers admitted that they were selling at less than code minimum prices, 58 percent of the fir manufacturers expressed a desire that minimum prices be abandoned, 69 percent of the pine manufacturers admitted that they were selling at less than minimum prices, and 54 percent of the pine manufacturers wanted to see minimum prices abandoned. On October 30th the Small Mill Pine Association, composed of operators in Mississippi, Alabama, and portions of Florida and Georgia, voted to abandon minimum prices. Various federal judges in the South, appealed to take injunctive action either against or in favor of enforcing minimum prices on lumber, took stands in contradictory ways.(*) Generally speaking the setting of minimum prices on emergency basis did not have the intended effect, -- the legal validity of the minimum prices was not appreciably enhanced thereby. Finally the majority of West Coast operators formed themselves into the "Fixed Price Repeal Association" and applied for a price hearing. The hearing took place December 11 to 13, 1934. It developed that a substantial majority of those subject to the code were in favor of repeal, although the lumber fabricating groups were still predominantly in favor of retaining price control. On December 22nd, 1934, N.R.A. suspended minimum prices indefinitely. For some time thereafter lumber fabricating groups protested this action of N.R.A.(**)

The production control features of the code appear to have had no appreciable effect, presumably because quotas were set at too high a level.

Chart No. 1 has been included in order to permit a degree of objective appraisal of the actual effects of price control under the Lumber Code. This chart records the fluctuations of three indexes, the wholesale price of lumber, the wholesale price of building materials including lumber and the production of lumber.

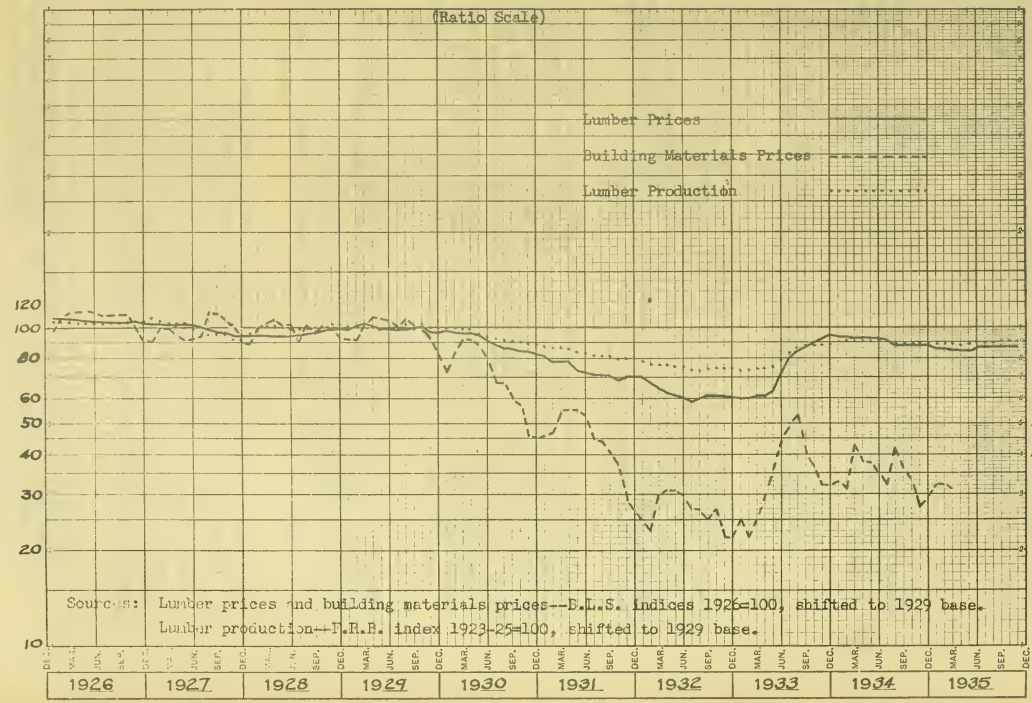
It is essential at this point to interject certain cautioning comments with reference to the extent to which indexes of this character may be expected to actually portray the effect of code provisions. The following factors should be borne in mind not only in connection with this specific group of indexes but in connection with all price indexes used in this report in connection with other industries.

(*) History of the Lumber and Timber Products Code, page 337.

(**) History of the Lumber and Timber Products Code, page 339.

INDEX NUMBERS OF WHOLESALE PRICES OF LUMBER, WHOLESALE PRICES OF BUILDING MATERIALS (INCLUDING LUMBER), AND LUMBER PRODUCTION, BY MONTHS, 1926-35.

(1929=100)



N.R.A.

(1) The Bureau of Labor Statistics wholesale indexes especially in connection with such broad commodity groups as lumber or building materials represent merely weighted averages. The fluctuations of lumber prices as a whole may, for example, conceal quite different fluctuations in the prices of individual woods.

(2) These indexes are all based on reported prices and represent therefore the nominal price level. Fluctuations in terms of sale, for example, or in discounts will not be recorded. Neither will sales in violation of code provisions, since such transactions were generally sub rosa and would not be reported.

(3) Where attempts were made to evade code provisions through such devices as sweetening of quality these again would not be reflected.

(4) Despite all these considerations it is nevertheless probable that the indexes are on the whole fairly representative. However, it is impossible to assume that the movements during the code period reflected merely the effects of the code provisions in general, or of code price provisions in particular. The effect of other economic forces operating during the same period can not be eliminated from consideration.

With these reservations in mind the chart still presents and interesting picture. It depicts a decline in lumber prices since 1929 at a rate substantially greater than the fall in the price level of all building materials. Between May and December, 1933, however, a sharp rise is recorded in the lumber index, which brought it above that for building materials as a whole. This rise was presumably anticipatory of the effect of N.R.A. and of code restrictions, since the code price provisions did not go into effect until November and December, 1933.

With the promulgation of code prices the price level was apparently stabilized except for a slight declining tendency, somewhat accentuated between July and August, 1934, or just about the time the 8% cut in the price of building woods was ordered. During this period the price level of lumber followed rather closely that of building materials in general.

The effect of the termination of code prices appears to have been slight, if any. It may be inferred that during the latter half of 1934, due to the increasing number of violations, the price of lumber reached much the same level that would have ensued under free market conditions, so that the removal of restrictions led to few upsetting effects. Probably by this time violations had become so widespread that the reported prices on which the index was based had become reasonably representative.

It may be a valid inference, viewing the situation as a whole, to assume that price fixing under the code had a temporary stabilizing effect on the market, but that at the end of a year its effect was no longer appreciable.

It is pertinent to note the declining tendency in lumber production between the middle of 1933 and the beginning of 1935. To what extent this trend may be traced to the price level set under the code is, of course, problematical.

IV. THE CONSUMERS' SERVICE TRADES

With the exception of the Restaurant Industry, the representatives of which requested a mandatory markup amounting to 100% of the cost of food, direct price fixing was the goal of the code sponsors in all the service trade.

The Code for the Cleaning and Dyeing Trade was presented by the National Association of Cleaners and Dyers, representing plant owners, and by the National Association of Retail Tailors, Cleaners and Dyers, representing the tailors. Power was sought for the Code Authority to fix prices for all services of the Trade.

The Code sponsors were bitterly opposed to the tactics of the "Cash and Carry" element which had recently entered the Trade and which had taken the lead in the price wars which had resulted in the reduction of the price for cleaning a standard garment (woman's plain dress or man's three piece suit) from the average pre-depression level of $1.50 to as low as 29¢, and even, by way of specials, 19¢. This latter group voiced strong objections to the proposal as presented, questioned the general principle of price fixing, and maintained that, if minimum prices were to be established, a differential should be provided permitting the charging of lower prices for "cash and carry" than for "call and delivery" service. They contended that such a differential was justified by the fact that their mode of operation was inherently cheaper, a contention not adequately supported by data. They further claimed that a differential was essential to induce the customer to carry his garment to the store, call for it and pay cash in preference to having it called for and delivered, frequently on a credit basis.

Upon recommendation of Division Administrator Whiteside, the Code was approved in November 1933, carrying a provision permitting local administrative boards, responsible to the Code Authority, to establish minimum price schedules subject to Administration approval. No provision for a differential between the different types of services was specified.(*)

(*) Other Service Trades had similiar goals:

The Laundry Trade in presenting a Code also requested authority to establish minimum price schedules. The cash and carry problem also existed in this Trade, though less acute than in the Cleaning and Dyeing Trade. Negotiations on this Code were protracted due to problems involving the labor provisions. By the time these difficulties had been settled, N.R.A., rendered wary by unsatisfactory experience with the Code for the Cleaning and

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As has been stated, minimum prices became effective in only one Service Code, the Cleaning and Dyeing Code. The reason for this was entirely fortuitous. The Cleaning and Dyeing Code was the first approved, and experience with the enforcement of minimum prices was so unsatisfactory that, by the time Codes for the other Consumers Service Trades had been approved, the Administration considered it unwise to extend the experiment.

(*) (Footnote continued)

Dyeing Trade, declined to approve the provision without many changes, primarily directed toward assuring a greater degree of voluntary compliance. Under the provisions of the Code and the Executive Order approving it, price schedules could be submitted to N.R.A. in any area only after a public hearing and after signatures had been obtained from not less than 70% of the members of the trade in that area signifying their concurrence. It was hoped that this procedure would insure the submission of price schedules representing, not the arbitrary position of a dominant group, but the result of a reasonable compromise between all factions. It is pertinent to note that the dependence of labor provisions upon price control was implied in the provision that the Code was not to be effective in any area until hearings had been held and prices approved.

The approved Code for the Barber Shop Trade, and the Code for the Beauty Parlor Trade in its final revised form, followed the general lines of the Laundry Code in requiring local hearings and petitions signed by the bulk of the trade, and went even further by specifically providing for a differential in favor of shops catering to a poorer clientele.

The Code sponsors for the Shoe Rebuilding Trade claimed that price fixing was essential to curb the competition of the chain operators. As a result of a curious compromise, designed apparently to secure the cooperation of trade members with reference to labor provisions while avoiding the problems inherent in attempts to fix minimum price schedules, the Code was approved with the minimum price provision intact, but the Executive Order of approval stayed the effectiveness of the provisions indefinitely.

The Code for the Hotel Industry contained no price fixing provision but did provide for local codes of fair practice. Subsequent to the approval of the Code, hearings were held in several local areas with a view to the establishment of such local codes. In every case direct price fixing was demanded, the statement frequently being made that compliance with labor provisions was otherwise impossible. Attempts were made by N.R.A. to evolve a compromise not inconsistent with policy. One such scheme provided for price filing on the basis of local option, further permitting complaints against filed prices which appeared to be so low as to constitute destructive price cutting. Should such complaints be found valid by N.R.A., the schedule in question would have to be revised upward. This proposal, however, was abandoned after the Review Division objected.

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Price schedules at a level considerable above those previously prevailing were approved by the Administrator on November 22, 1933, only two days after the Code had become effective. These prices were approved for a trial period, subject to more thorough consideration at a Public Hearing scheduled for December 18, 1933.

The cash and carry cleaners, who were apparently totally without representation on the Code Authority and its local agencies, and who therefore had had no voice in the preparation of these schedules, protested vigorously, claiming that the prices were far too high and that in any case a differential was essential. Led by Mr. Isidore Paul of New York, they refused in a body to comply with the price schedules established.

As a result of these protests and refusal to comply, the date of the scheduled hearing was advanced. On the basis of evidence submitted, the N.R.A. still declined to authorize a differential, but did order a horizontal cut of approximately 20% in all price schedules.

The revised basis appears to have been satisfactory to neither group, the Code Authority claiming that prices were too low and the cash and carry operators insisting on a differential. Non-compliance continued to an increasing extent, and when legal action was taken by N.R.A., the Courts generally refused to grant injunctions or to sustain criminal prosecutions. It was contended by the violators that compliance would mean inevitable bankruptcy through the reduction of the volume upon which their mode of operation was predicated.

Efforts by N.R.A. to compromise the issue proved unsuccessful and the situation became increasingly unsatisfactory during the spring of 1934. On May 26, 1934, primarily as a result of this condition, an Executive Order was issued, suspended enforcement of the Trade Practice provisions of the Service Codes. The experiment was thereupon terminated.

Conditions in the Cleaning and Dyeing Trade subsequent to this termination, at least in the New York Metropolitan area and in the State of New Jersey, have apparently gone from bad to worse. During December, 1935, the writer had the opportunity of interviewing various officials of the Cleaning and Dyeing Board of Trade of New York City. These individuals, all of whom were owners of wholesale plants, gave evidence of an almost complete demoralization of the trade in

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(*) (Footnote continued)

In accordance with the original proposal of the Restaurant Industry, the Code as approved contained a provision in effect specifying a mark-up of 100% over cost of food. This provision, however, was stayed in the Executive Order approving the Code, and despite requests by the Code Authority to remove the stay, never became effective.

that city. According to their statements, 22 of a total of 65 wholesale plants were forced out of business during 1934, while the plight of the retail tailors is becoming increasingly deplorable. Prices have shown no increase, wholesale prices average between 10 and 15 cents, prices charged by the cash and carry chains are as low as 15 to 19 cents.

In New Jersey, legislation has recently been enacted providing for minimum price fixing in that State.

Under the terms of this legislation and after many hearings which revealed deplorable conditions especially among retail tailors, minimum price schedules were promulgated effective December 20, 1935. The base price established was 59¢ with a ten cent extra charge for delivery. Court tests are at present being conducted to test the validity of this legislation, and experience to date has been too short to permit any inferences as to the effect of the experiment.

It is noteworthy that minimum standards of quality as well as minimum prices have been included in the New Jersey regulations.

V. WOOD CASED LEAD PENCIL INDUSTRY

The initial proposal of the industry contained several interesting features designed to eliminate competition between manufacturers for production volume, to re-establish functional distinctions in the distribution field, and to fix minimum prices on standard lines.

Competition for volume was to be eliminated by strict allocation of production together with a prohibition against the installation of new machinery. Functional distribution was to be re-established and maintained by an elaborate set of marketing regulations, including a prohibition of direct consumer sales by manufacturers. Minimum prices were to be established on standard lines, such prices being "the prices at which the retailer will sell one gross of pencils to the consumer." Compliance was to be effected through a boycott by the manufacturers of any distributor who sold to a violator of these provisions.

The proposals were sponsored primarily by the four largest companies in the Industry, who resented the inroads into their markets of several aggressive new entrants. In addition to these, the provisions had the endorsement of several of the largest wholesale and retail distributors of the product.

Opposition was voiced to these provisions by the smaller companies at whom they were aimed. (*) These establishments presented counter-proposals in which nearly all of the so-called marketing rules were eliminated and direct price fixing was replaced by a prohibition against sales below the "average" cost of production, to be determined

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(*) Letters in Volumes B-I, B-II, addressed by various companies to Administration prior to public hearing, November 6, 1933, Also Transcript of Hearing, pages 260-266.

on the basis of a mandatory uniform system of cost accounting.

Considerable controversy took place during the discussions both before and after the public hearing, with the result that the approved code carried the marketing rules proposed by the Big Four, but the cost provisions were a modification of those advocated by the other members of the industry.

Both the Consumers and the Industrial Advisory Boards voiced objections to the provisions. The Consumers' Advisory Board contended in part:

> "Marketing terms should be deleted in entirety. It is frankly a price fixing agreement involving virtually every device for the elimination of competitive distribution. The Code Authority is given power, on the grades constituting the bulk of the business, to ascertain fair minimum prices with no stated relationship to cost or any other factor. Customers are classified and the scale of trade and quantity discounts are rigidly fixed for each class, with the further provision for maintenance of retail price schedules, all of which is in direct opposition to national policy as expressed in legislation and court decisions over many years and is in opposition to the policy of this Administration as expressed in Policy Memorandum of October 25, 1933, signed by Alvin Brown, which specifically stated that no such provisions shall be admitted in codes.
>
> "The effect of such a plan would be to freeze the present system of distribution, eliminating competition in marketing, dictating policies and actions of dealers outside the scope of the code, and denying buyers of any opportunity to share in possible economics of manufacture and distribution."(*)

The Industrial Advisory Board stated:

> "The Wood Cased Lead Pencil Code has been in process well over four months, and has been troublesome from the start. The industry - rather the four members who themselves produce 75 percent of the volume of the business - have endeavored to dominate the code beyond ordinary reason, as first against the minority and next in insisting upon advantages and rights under the code patently against reason and the common weal."(**)

(*) Code Summary, J. F. Hedges to F. A. Staten, Consumers Advisory Board, 3/26/35.

(**) Industrial Advisory Board Report, B. A. Brennan to Ind. Adv. Bd. Vol. I, 1933.

The code did not provide the mechanics for the declaration of an emergency, the industry holding the view that the preamble of Article X, and Section 4 of the same Article made it possible for the Administration to approve a schedule of minimum prices as a necessary corollary to the fixed obligation of the members of the industry to maintain the scheduled price range for pencils. Acting on this assumption, the Code Committee presented to the Administration a schedule of so-called fair minimum prices for approval. The Deputy approved this schedule February 28, 1934, and advised the Code Committee to promulgate it, stating that formal approval would follow shortly.(*) A number of industry members refused to abide by the schedule on the gound that the Deputy had exceeded authority. The few that did conform found that their competitors were taking their business away from them and resorted to rebates in an endeavor to save their business. The Code Authority consequently, on April 26, 1934, formally petitioned for approval of the schedule. A public hearing was held on June 5th.

The Code Authority, in its brief supporting the proposal, maintained that costs of production bore no necessary relation to the minimum prices requested, contending that cost methods of determining prices were inapplicable to products which had to be sold with reference to units of currency.

Cost data supporting the petition were so meager that the Research and Planning Division requested further information. Further data were accordingly furnished. The Research and Planning Division then recommended denial on the following grounds:

(1) Cost digures did not substantiate the prices requested.

(2) The composite operating statement of the Industry showed a 2.05 percent profit on invested capital during 1933.

(3) The facts did not justify a finding of emergency.(**)

The Consumers' Advisory Board joined in this recommendation.(***)

The entire matter was referred to the Advisory Council which also rejected the petition. An excerpt from this ruling follows:

"Arbitrary classification of products and distation of price at which each must sell are always dangerous to small producers, and in this particular instance can easily damage the interest of those companies and products which are prevented thereby from finding their most advantageous market level. There is obviously potential, if not immediate,

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(*) Statements made at public hearing, June 5, 1934, pages 50-63.

(**) Memorandum of Research and Planning Division to Deputy, June 13, 1934.

(***) Memorandum of Consumers' Advisory Board to Deputy, June 14, 1934.

danger for both the penny pencil and the small manufacturer in this clause."(*)

In view of these adverse opinions, the Administrator denied the petition of the industry on the ground that the submitted schedules were inadequately substantiated.(**)

Following this action on the part of the Administration, the Code Authority petitioned for the suspension of the marketing rules on the ground that without a schedule of minimum prices their operation would be impossible. This request was approved and the marketing rules were stayed for a period of 90 days from November 24, 1934 and then again for another 90 day period.(***)

Immediately following the denial of the industry's petition for a schedule of minimum prices a price war commenced. Prices started receding in September, 1934, when it appeared that the schedule would not be approved and have been fluctuating more or less downward ever since.

VI. CONCLUSIONS

It is, of course, difficult to deduce any generalizations with reference to direct minimum price fixing on the basis of so limited a sample. Nevertheless the following inferences seem justified.

A. Implications of the Device.

In principle the establishment of minimum prices might be expected to set merely a price floor, a level below which sales could not be made, but above which price competition could prevail freely. Apparently, however, this was not the actual effect of the device as applied.

In both the Lumber Code and the Cleaning and Dyeing Code the price schedules established seem to have functioned not only as minima but also as maxima. In the case of the Cleaning and Dyeing Code, where no differentials were provided, it was virtually impossible to sell services for more than the code price. Consumers more or less naturally assumed that the price set by the Government was an adequate price and that, consequently, any higher price was unwarranted.

In the Lumber and Timber Code conditions were somewhat more complex, in that differentials were provided between species and between mills of various types. Nevertheless, on the basis of the limited data available, it seems a warranted inference that each price schedule, within its limited field of application, operated to establish fixed rather than minimum prices.

(*) Advisory Council Decision 39, page 35, dated September 26, 1934.

(**) Administrative Order No. 291-11, dated November 5, 1934.

(***) Administrative Order No. 291-14, dated November 24, 1934.
Administrative Order No. 291-16, dated March 6, 1935.

B. Administrability.

It was probably just this tendency of minimum prices to become fixed prices that made the proper administration and enforcement of the device impossible.

In the Cleaning and Dyeing Trade certain units had for some time utilized a price differential as an inducement to the public to purchase a lesser degree and possibly a poor quality of service.

A uniform price level would necessarily operate to remove this inducement and thus eliminate a primary basis of sales appeal. Consequently these cut rate concerns were faced with only two alternatives, either to close up shop or else to violate the code. It is only natural that the latter course should have appeared far less distasteful.

In the Lumber and Timber Code, administration was confronted with similar difficulties. In the first place, although the code provided for the establishment of differentials, it was difficult in the extreme so to determine these as to yield a reasonable degree of satisfaction to most parties concerned. In the second place, within each group in which prices were uniform, members unable to compete on a price basis resorted to indirect means to accomplish the same result, such as rebates, sweetening of quality, etc. From such evasions it was but a short step to open violations, with a resultant general breakdown of the code price structure.

A further major difficulty was the questionable legality of the entire proceeding and the consequent reluctance of the courts to cooperate in the job of enforcement. But even had these legal difficulties not existed it is probable that at least in the Cleaning and Dyeing Trade and the Lumber and Timber Industry compliance would have been extremely difficult to secure. The great number of competing units in each case and the impossibility of standardizing products or services could not but make adequate policing virtually impossible.

C. Success of the Device as Related to the Problems Existing.

1. The Lumber and Timber Products Industry.

Prior to an appraisal of the extent to which direct minimum price fixing succeeded in meeting the specific causes of price dislocation in the Lumber and Timber Products Industry, it appears advisable to recapitulate these difficulties briefly. On the basis of the analysis contained in the previous chapter, these comprised primarily:

(a) The gradual displacement of wood by competing materials.

(b) The great drop in the demand for wood due primarily to the reduced rate of activity in such industries as the construction industry.

(c) The relatively slight elasticity of demand.

(d) The pressure of heavy fixed charges.

As has been seen, in so far as the price level itself is concerned, the anticipation of the effect of the code seems to have resulted in raising the price level during the latter part of 1933 at a rate substantially more rapid than might otherwise have prevailed. The code price provisions themselves probably prevented any reaction from this rise during the first half of 1934. From that point on, however, it is likely that the price provisions were of little effect and that the price of lumber gravitated to much the level which ordinary market forces might in any case have determined.

On the other hand, during 1932 and the earlier part of 1933 the demand for lumber as compared with other building materials had appreciably increased. This was probably directly traceable to the widening differential between the price of lumber and the price of other building materials. When this price advantage decreased immediately prior to the code and during the code period, the incentive for the use of lumber correspondingly diminished, and there was an apparent downward trend in its consumption.

To this extent, then, price regulation in the Lumber Industry may have served to aggravate rather than to ameliorate the basic difficulty, which was lack of demand, occasioned, in part, by the competition of substitute products.

2. The Cleaning and Dyeing Trade

In the Cleaning and Dyeing Code the genesis of the problem was quite different. Here price wars were the outgrowth of a severe factional struggle between two groups, which for convenience will be termed the old-line group and the cash and carry group. The old-line group, which controlled the Code Committee and the Code Authority, avowedly aimed to win back from the cash and carry group markets which had been lost as the result of "chiseling" tactics.

It does not seem pertinent here to enter into any details as to the merits of the controversy. Had it been possible rigidly to enforce the price schedules established, it is quite probable that the aim sought might have been in a large part achieved. What it does appear necessary to emphasize is that:

(a) Such a result could not in any case have been achieved without an extremely bitter struggle and could in no event be based on the hope of obtaining a fair degree of voluntary compliance.

(b) Price control under these conditions must be predicated on a decision by government to take sides as between two competing groups within a trade.

In New Jersey, at the present time, the State government has apparently decided that the plight of the retail dealers constitutes so acute a sociological problem as to warrant taking sides in an

intra-trade controversy. The results of that experiment lie in the future. Certainly the field seems more appropriate for State than for Federal intervention.

3. Wood Cased Lead Pencil Industry.

In the Wood Cased Lead Pencil Industry the demand for price control again had its genesis in a struggle between factions. A dominant group desired to maintain its position against the inroads of new and aggressive entrants into the field. Approval of the price schedules proposed would have implied a definite decision by the government to back the dominant group in its position. In this case N.R.A. decided that to take such action would be manifestly improper and, consequently, refused to do so.

D. Summary.

In summary, experience with direct minimum price fixing as a means of price regulation appears to justify the following conclusions:

(1) The device tends to establish not a true price floor but rather a fixed price level.

(2) The device is extremely difficult to administer, especially where units are many and usually small and where standardization is extremely difficult.

(3) Where the basic problem lies in lack of demand resulting at least partially from loss of markets to substitutes, minimum price fixing, even if successful in its immediate purpose, tends to defeat its own aims.

(4) Where minimum price fixing is desired by one group in an industry as an instrument to restrict competition of another group, its approval must be predicated upon a decision by government that it is warranted in taking sides in the controversy.

CHAPTER VII

PRICE REGULATION THROUGH EMERGENCY DECLARATION.

I. NATURE OF THE DEVICE

Whereas direct minimum price fixing established a uniform price floor for all products for all members of the industry, emergency price control was restricted to specific products for limited periods of time. The genesis of this device has been discussed previously in Chapter IV. Code provisions incorporating this device followed two general patterns. The first was the one set forth in the Office Memorandum of February 3, 1934 under which the Code Authority determined the existence of an emergency and set floor prices based upon lowest reasonable cost, subject to administrative approval. The second was the one recommended in Office Memorandum No. 228, which was issued on June 7, 1934, under which the declaration of an emergency and the establishment of prices was to be by the Administrator, for periods not to exceed 90 days, on the basis of a report by the Research and Planning Division.

In actual application these two provisions differed in form rather than in principle, since the procedure followed by N.R.A. in the declaration of emergencies and establishment of prices was substantially the same in each case.

II. EXTENT OF APPLICATION

110 basic and 111 supplementary codes included provisions permitting the declaration of price emergencies. In about one-half of these the provision was based on the Office Memorandum of February 3, 1934, and in the remainder on Office Memorandum No. 228. (*)

Despite the large number of codes containing clauses of this nature, the actual number of emergencies declared was very small. This was not due to any hesitancy shown by Code Authorities in applying for them. Many such requests were made, although there is no record available as to the exact number. However, N.R.A. showed extreme reluctance in complying with these pleas, and emergency orders approving minimum prices were issued only in connection with the following 11 codes:

Agricultural Insecticide and Fungicide Industry
Cast Iron Soil Pipe Industry
Dress Manufacturing Industry
Fur Dressing and Fur Dyeing Trade
Ice Industry
Lumber and Timber Products Industry
Retail Rubber Tire and Battery Trade
Retail Solid Fuel Industry
Retail Tobacco Trade
Waste Paper Trade
Wholesale Tobacco Trade

(*) Research and Planning Division, Post Code Analyses, Serial 40-D.

Of these, price control in the Lumber and Timber Products code has already been considered as representing direct minimum price fixing rather than price fixing of an emergency nature. In the Fur Dressing and Fur Dyeing Trade, although the actual code provision did not specifically stipulate that price fixing was to be resorted to only in emergencies, the implications of the provision and the character of its application appear to indicate that it properly belongs in the emergency category.

Studies of N.R.A. experience of the emergency device have been completed for the following codes;

Agricultural Insecticide and Fungicide Industry
Cast Iron Soil Pipe Industry
Ice Industry
Fur Dressing and Fur Dyeing Trade
Waste Paper Trade
Retail Rubber Tire Trade
Retail Tobacco Trade
Wholesale Tobacco Trade

These will now be considered individually in the order named.

III. AGRICULTURAL INSECTICIDE AND FUNGICIDE INDUSTRY

The code for this industry as originally proposed included a provision prohibiting sales below cost, as determined by a uniform system of cost accounting. At the first public hearing on February 7, 1934, the legal adviser invited the proponents to consider the model emergency provision (that suggested in the Office Memorandum of February 3, 1934). The industry accepted this suggestion and at the second public hearing a month later the code had been revised accordingly.

It is pertinent to note that the largest producer of arsenates (The General Chemical Company) took no part in the proceedings. (*)

There was no objection to the provision as revised. At its first meeting on May 14, 1934, the Code Authority declared that an emergency due to destructive price cutting had arisen, and on July 5, 1934, petitioned the Administrator to fix minimum prices. Reference to Chart II will reveal that the prices of both lead and calcium arsenate had risen very sharply between May and July 1933, apparently in anticipation of the effect of N.R.A. However, a fresh decline had started in January, 1934, which had been accelerated around April, 1934, with the result that by June the price had fallen to a level below its earlier depression low.

The petition which the Code Authority submitted with its declaration of emergency stated that production of the two arsenates was confined to 15 firms; that prices filed with the Code Authority

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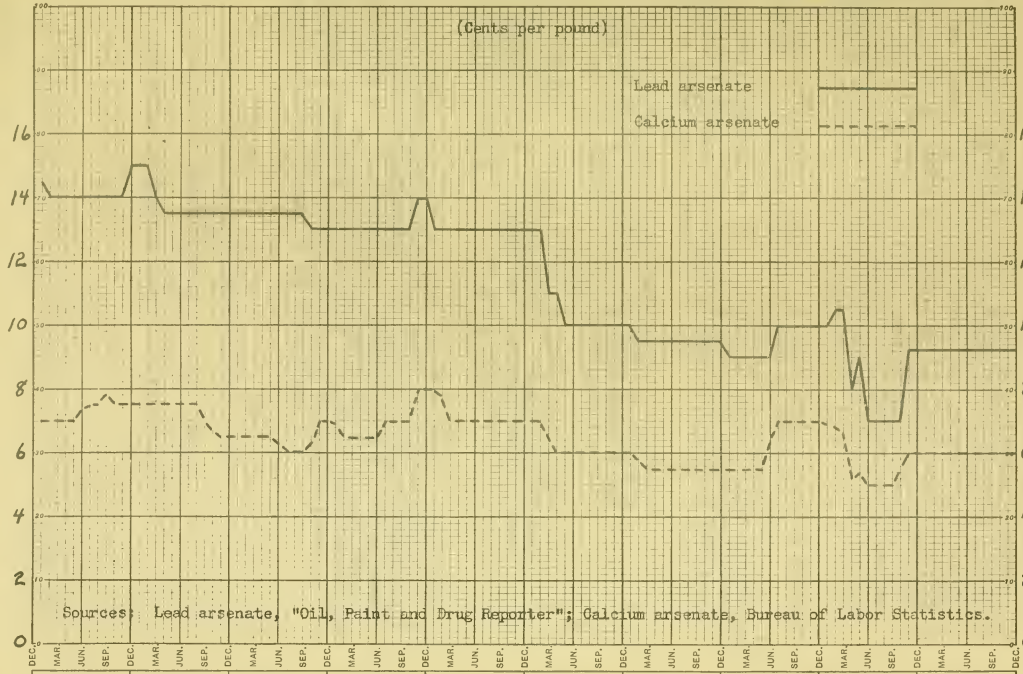
(*) Minutes of Meeting of Members of Association, August 22, 1933 at Atlantic City.

AGRICULTURAL INSECTICIDE AND FUNGICIDE INDUSTRY

Wholesale Prices of Lead Arsenate[1] and Wholesale Prices of Calcium Arsenate,[2] by Months, 1926-1935



Sources: Lead arsenate, "Oil, Paint and Drug Reporter"; Calcium arsenate, Bureau of Labor Statistics.

1/ Prices are for car loads, or large lots, New York; include freight prior to Nov. 1934 but not thereafter.

2/ Prices are for drums, New York.

N.R.A. Division of Review.

were as low as 5 cents a pound for calcium arsenate, and 7 cents for lead arsenate, whereas the costs of eight manufacturers of calcium arsenate ranged from 5.348 cents to 9.466 cents, and costs of eleven manufacturers of lead arsenate ranged from 9.01 cents to 10.99 cents; that some members, anticipating the code and intending to defeat it, had, prior to its approval, entered into contracts to grant discounts, even below filed prices. Attached to the petition were letters from every member of the industry except General Chemical Company, Commercial Company, Dow Chemical Company, and Standard Chemical Company (Commercial joined in the request later). All of these letters supported the Code Authority's petition. (*)

These letters all alleged that it would be impossible to continue production at the prices prevailing except at heavy losses.

A public hearing was held on August 10, 1934. It was alleged that the drop in price was entirely predatory in nature and represented a deliberate intent by one company to drive others out of business. Pertinent quotations are noted here:

> "I know there are certain companies * * * willing to continue at these figures for another year or two in order to wipe the rest of us out of business. I have been told that by these companies directly." (**)

> "It appears to be the tendency on the part of certain of the industry to drive others out. I know from a personal statement * * *. I talked with a representative of that company (General) * * *. He said 'we no doubt will take a $200,000 loss this year' * * *." (***)

In a letter dated July 19, 1934, the Code Authority asked that minimum prices be fixed at 6½ cents a pound for calcium arsenate and 10.3 cents for lead arsenate. Detailed cost figures covering 11 manufacturers of lead arsenate and 9 manufacturers of calcium arsenate were submitted. No members of the industry actively opposed the declaration of emergency and the fixing of minimum prices, but the Dow Chemical Co., the Standard Chemical Co., and the General Chemical Company did not participate in the proceedings.

(*) Brief submitted by Code Authority, July 5, 1934.

(**) Transcript of Hearing, August 10, 1934, page 90.

(***) Transcript of Hearing, August 10, 1934, page 200.

On November 9, 1934, Order No. 275-A-11 was signed by the Administrative Officer to become effective 48 hours thereafter. This order fixed the following prices for a period of 90 days.

	Lead	Calcium
Multi-car lots	8 cents	5 cents
Car lots	8¼ cents	5¼ cents
10 case lots	8½ cents	5½ cents
Less than 10 case lots	9 cents	6 cents

Prices are per pound delivered.

After the declaration of the emergency and fixing of minimum prices there were no complaints that the prices fixed were improper, nor were there any complaints that sales were being made at lower prices.

The prices accordingly established were 1 cent lower than the lowest reported cost for lead arsenate, and .3 of a cent lower than the lowest reported cost of calcium arsenate.

Insofar as published price data were representative of actual conditions, the declaration of emergency both in anticipation and in operation very materially raised and stabilized the price level. Referring again to Chart II, the wholesale price of calcium arsenate increased from 5 cents per pound in September 1934 to 6 cents per pound in November, remaining at the latter price through November, 1935, the last date for which data had been obtained. The price of lead arsenate increased from a low of 7 cents per pound in September, 1934 to 9.25 cents in November, 1934, remaining at that level through December, 1935.

Further information with reference to the effect of the emergency declaration was secured through a field survey conducted by this unit during December, 1935. The reactions of Mr. L.S. Hitchner, Secretary of the Agricultural Insecticide and Fungicide Association, and of several industry members, including Mr. Riches, Jr., of the Bowker Chemical Company and Mr. D. E. Connolly of the Ansbacher-Seigle Co. may be summarized as follows:

> Mimimum prices were set at figures lower than the average costs stated by such members of the industry as supplied cost data, but they appear to have covered the direct costs of most of the members of the industry plus enough of the overhead and selling cost to make the prices generally profitable to the industry. Although minimum prices were suspended on April 7, 1935, prices during the remainder of the year remained firm at about the level of the minimum prices. This was the first year in a long period that downward revision did not take place in the latter part of the season. One person familiar with the industry estimated that the code had saved the industry half a million to a million dollars. Every person connected with the industry who was interviewed was enthusiastic about the code's results. Even the General Chemical Co. is alleged to have

expressed satisfaction with the results of the code, in spite of having originally opposed it. A number of the smaller concerns engaged exclusively in the manufacture of agricultural insecticides as compared with some large concerns producing insecticide as only one of many products - were stated to have been preserved from extinction by the code. Mr. Connolly of the Ansbacher-Seigle Co. stated that his concern had been saved by the code. Mr. Hitchner said that he considered this preservation of the existing members of the industry to be economically desirable. The industry, he continued, does not possess over-capacity to meet the demand at the peak season except in certain items. All of the present members of the industry are in his estimation legitimately engaged in production. Some of the lowest-cost producers are the medium-seize or smaller concerns.

The unanimous testimony of the industry was that the year 1935 had been a far better one than 1934. Yet the average quoted price for lead arsenate for 1935 was 15 per cent lower than for 1934 and the average quoted price for calcium arsenate for 1935 was only 5 per cent higher than for 1934. This was attributed to the fact that in 1935 quoted prices actually meant realized prices; that rebates had been substantially eliminated.

IV. CAST IRON SOIL PIPE INDUSTRY

The original minimum price proposal prohibited selling pipe or specialties below cost for the purpose of injuring a competitor or lessening the effect of competition. When the code was approved on September 7, 1933, a proposal had been advanced to prohibit selling below reasonable cost. The Code also limited the use of productive facilities to 27 hours per week, attempting in this manner to insure some distribution of the greatly reduced volume available among all industry members.

After the code had been in effect for some months the price of cast iron soil pipe started to drop. According to Administration officials, the Clay and Bailey Manufacturing Company in Kansas City maintained that by using 80 per cent scrap iron and 20 per cent pig iron it could sell at a profit below the quoted f.o.b. price Birmingham ($46 per ton).* The Hedges-Walsh-Weidner Company of Chattanooga (controlled by Mr. Hedges, who was independently wealthy) met such successive price drop initiated by Clay and Bailey until a low of $22.50 per ton was reached. This price ($22.50) compared with representative costs in 1929, according to the Code Authority, of $39.06 per ton in the south and $44.46 per ton in the north.** The other members of the industry, not so strong financially, found it increasingly difficult to operate, and there was danger that the labor provisions of the code would be violated in an attempt to salvage something.

(*) Verbal information given by Neil Anderson, Aide on Code.

(**) Memo from Mr. Rouzer, Secretary, Cast Iron Soil Pipe Association to H.H. Halstead, Asst. Deputy, dated December 5, 1933.

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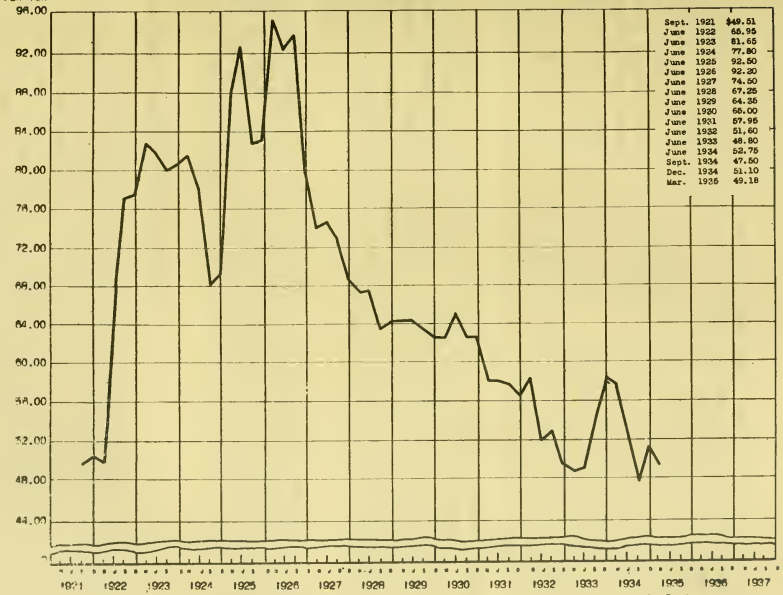
CHART III

CAST IRON SOIL PIPE RETAIL PRICES - SEPT. 1921 TO MAR. 1935

4 INCH EXTRA HEAVY L.C.L. DELIVERED



Source: Bureau of Standards, Division of Builders and Housing, "Building Materials Prices" Sept. 1921 to June 1933.
Reports to N. R. A. from F. W. D. Sept 1933 to March 1935.

N. R. A.
RESEARCH AND PLANNING

Chart III reveals a sharp break in prices during the first half of 1934.

In order to cope with this situation the Code Authority petitioned the Administration for an amendment to the code embodying the emergency provision recommended in Office Memorandum No. 228. The amendment was approved on July 10, 1934.

Immediately after the amendment had been approved the Code Authority petitioned the Administration to declare an emergency and to promulgate a schedule of minimum prices. The cost data submitted by the Code Authority and the Administration member were so inadequate and the need for prompt consideration was so imperative that the Division of Research and Planning recommended that the minimum price be based on direct costs exclusively with labor charges computed on the basis of the Southern rate.* Accepting this recommendation, N.R.A. declared the existence of an emergency in the industry and established a minimum price for heavy cast iron soil pipe of $27.50 per ton f.o.b. Birmingham, Alabama, to which the published freight rate to destination was to be added. (Cost of pig iron was $14.50 per ton and labor cost in the South $13.00 per ton). This order was issued on July 16, 1934, for a period of 90 days.**

The Order as originally issued was twice amended, once on August 17, 1934, by Administrative Order No. 18-10, and again on September 7, 1934, by Administrative Order No. 18-11. These changes were concerned with the allowance for freight rates and differences between carload and L. C. L. shipments. Considerable objection had apparently been raised originally to certain inequalities in this connection, but the modifications included in these orders appeared to have been, on the whole, satisfactory to the industry.

As the time for the expiration of the emergency neared, the Code Authority requested a further 90 day extension with an increase of $5.00 in the minimum price. This plea for extension was considered by the Advisory Council of N.R.A. which concluded by a divided decision that such extension was inadvisable. In its decision the Advisory Council stated in part:

Argument against Continuation

"This is really not an emergency, but a chronic condition. The market for cast iron soil pipe is dependent upon new buildings. Price fixing is wrong in principle, even though some of the price cutting has admittedly been predatory. It was predatory in the first instance because the cast iron soil pipe people, without benefit of either code or provocation, raised prices to an extremely high level, approximately $45.00 per ton, immediately after the code was passed. Production naturally soared in both old and new foundries, and the result was a general price cutting orgy.

(*) Research and Planning Memorandum to General Johnson, dated July 13, 1934.

(**) Administrative Order No. 18-8, N.R.A. files.

"Opponents of continuation maintain that it is not what we do so much as what people think we do that is important. The issue here is not one of a serious economic menace. Continuation of a minimum price of $27.50 for another 90 days is not likely to seriously interfere with business. Even if the price were considerably lower, there is no reason to expect any particular increase in consumption. But the fact remains that the public does not differentiate between reasonable and unreasonable decisions. All that it knows is that another price has been fixed and maintained.

"A collateral feature is that there is a 27-hour limitation on the operation of productive equipment. The Council did not have occasion nor opportunity to inquire into the working of this provision."

Case for Continuation

"There is considerable reason to fear that if the minimum prices are not continued, panicky price cutting will ensue. The Industry claims that due to the weak financial condition of many of its members, further warfare of this type would be disastrous and would result in plants being closed down and employees released.

"No one contends that the price fixed is not well below cost. There is no reason to anticipate a stimulation of business from still lower prices. It is true that a continuation of this official emergency for even 90 days would mean a departure from principles that the Council recognized to be sound; that principle is sound only, however, because and when interference with the free flow of commerce and curtailments of production and consumption follow its violation. When circumstances in a particular industry are such that these uneconomic results are not likely to occur, the principle does not apply.

"When an issue is evenly balanced as in the present case, there is nothing to be gained by arousing antagonism in an industry against N.R.A. for the sake of theoretical consistence. It is true that a precedent is established of which other industries might try to take advantage. This particular instance, however, occuring in a relatively small industry as it does, is not likely to receive much publicity. Danger from this quarter is further reduced by the fact that the price allowed fails to recover even cost of materials and labor. There is not much in such a concession to excite envy. If the appeal for continuation should be granted, its limited nature should be clearly brought out."*

Apparently the declaration of the emergency did have the effect of stopping price wars. Three weeks after the expiration of the emergency price order the Administration Member reported that prices had dropped although no new prices had been filed. Evidence as to the existence of this drop is unavailable, and it is probable that even if it existed it

(*) Advisory Council Decisions, Vol. I, pp. 1934-44-45.

was not serious. A check of the filed prices showed that a $5.00 rise in price was quoted and filed May 1, 1935.*

Unfortunately, the statistical source upon which Chart III is based has been discontinued and no accurate information is available as to current conditions. Nevertheless, it does appear that the declaration of an emergency had the effect of arresting the price war in this instance, and that it has not since been resumed.

V. FUR DRESSING AND FUR DYEING TRADE

As originally presented, the code for the Fur Dressing and Fur Dyeing Industry provided for direct establishment of minimum prices by the Code Authority. The industry was by no means unanimous in presenting the proposal. The legal counsel for the Fur Dyers Trade Council, Mr. Louis H. Solomon, contended that a minimum price schedule would tend to throw business from the small man to the large concerns because the superior quality and reliability of the latter would be preferred by dealers when price was uniform. He also contended that subterfuge in the form of secret allowances or the like easily could be used to circumvent any such provision.**

Mr. George J. Beldock, representing the rabbit dyeing industry contended that the fixing of prices would put a premium on inefficiency.***

The representatives of the fur dealers, the principal customers of the fur dressers and fur dyers, objected on the ground that a minimum price, if established, would probably be violated and the fur dealer utilizing the services of the complying members would be placed at a disadvantage as compared with those dealing with violators.****

Despite these objections, and despite the adverse recommendations of the Research and Planning Division and the Consumers' Advisory Board, the code as approved permitted the establishment of minimum prices based upon lowest reasonable cost of production.

The code was approved on December 18, 1933, and almost immediately thereafter four divisions of the industry applied to the Administrator for minimum service charges. The Rabbit Dyers Division alone did not apply, as it was apparently free of the economic pressure bearing upon the others.

In addition to the difficulties to which reference has already been made, labor problems connected with the imminent expiration of certain union contracts were advanced to justify the request.

(*) Verbal report from Neil Anderson, former Aide on Code.
(**) Transcript of Hearing November 1, 1933, page 194.
(***) Transcript of Hearing, February 9, 1934, page 201.

(****) Transcript of Hearing, February 8, 1934, page 135.

A hearing was held on February 9, 1934, to consider these applications. The prices proposed appeared to have been supported by no adequate cost data.

None the less, minimum service charges were approved by the Administrator on February 9, 1934 for the Rabbit Dressers Division, on February 16, for the Fancy Fur Dyers Division and for the Fancy Fur Dressers Division, and on May 21st for the Dog Skin and Long Haired Dyers Division.

In view of the disorganized condition of the industry it is not surprising that non-compliance should have become evident from the very beginning. Numerous complaints of chiseling, secret rebating, excessive allowances for damages, etc., were received by the Code Authority and by the Administration. Most of the small plants were either openly ignoring or evading the schedules, and those who tried seriously to comply were losing business. Prima facie cases of violation, however, were extremely difficult to obtain. In view of the legal difficulties prompt court action was impossible.

As a result of these conditions, dissatisfaction with the price experiment grew rapidly.

After attending a meeting of the Fancy Fur Dressers Division in New York, the code economic adviser reported:

> "This meeting was largely concerned with the suspension of the minimum service charges. In all the divisions of this industry there is a growing belief that the setting up of a minimum service charges was premature and that major attention should be centered on obtaining compliance with labor provisions of the code."*

The Division Administrator expressed the opinion that:

> "The minimum service charge as in the fur dressing and fur dyeing industry has been harmful rather than helpful, and the sooner they are suspended or otherwise disposed of, the quicker N.R.A. can bring order out of chaos in this industry."**

But probably the best commentary upon these service charges is the following statement of the effective dates of the schedules and the dates upon which such schedules were suspended, in all but one case at the request of the industry:

(*) Memorandum from C. K. Hamill to M. Kossoris, May 9, 1934.

(**) Memorandum from Division Administrator G. L. Berry to R. S. Conkling, June 7, 1934.

	Approved	Suspended
Rabbit Dressers	Feb. 9, 1934	April 9, 1934
Fancy Fur Dressers	Feb. 16, 1934	May 29, 1934
Fancy Fur Dyers	Feb. 16, 1934	July 6, 1934
Dog and Long Haired	May 21, 1934	July 31, 1934

There is evidence that conditions in the fur dressing and fur dyeing industry since the lapse of the code have been decidedly unsatisfactory. In an interview on October 23, 1935, Louis Solomon, attorney for the Fur Dyers' Trade Council, stated:

"The chaos of the code has continued. There has been no recovery since the code. Cut-throat competition is worse than before the code. Prices have declined. They are now lower than ever. Not 10 per cent of the dressers and dyers are making a profit this year."

Interviewed on the same day, Michael Hollander, President of A. Hollander and Son, and Henry Schlesinger, both of whom were at different times Chairman of the Code Authority, commented to a member of this unit that the situation was worse than before the minimum service charges were put into effect and that current prices were the lowest they had ever known.

VI. WASTE PAPER TRADE

The Waste Paper Trade was included with several other divisions of the secondary waste materials industry in a master code, approved March 12, 1934, but the group represented by the American Paper Mills Supplies Institute refused to assent to the master code without the simultaneous approval of a supplemental code which should contain some form of price protection enabling its members to pay the wages required by the master code.

Aside from intense selling competition, there is alleged to exist in this trade an even more destructive competition - "buying competition." Wholesalers invade each others customers, attempting to alienate them by offering them more money than their competitors. A vicious circle develops as each dealer retaliates, at the same time, protecting his own source of supply by matching his competitor's offer. With little exception the same situation develops between the mixed dealers in regard to their suppliers. In this manner, though they are in the minority, they compel the balance of the industry to meet their competition, reducing the differential which should exist between the purchase price and the resale price to a vanishing point.*

The first proposal was a buying provision which would limit the price which dealers could pay for waste paper to an amount not more than the mill would pay for the paper, less the conversion cost.**

(*) Statement by Code Authority in support of Supplementary Code. In N.R.A. General Files (Folder #456)

(**) Memorandum dated August 22, 1935, from the Administration Member to Deputy Director F. H. Crockard, contained in Vol. A., in N.R.A. General Files.

The lack of feasibility of this provision as a remedy was readily apparent.

The Trade was finally induced to assent to a supplemental code approved July 12, 1934, which contained the emergency provisions from Office Memorandum No. 228. The Code Authority immediately sought the invocation of that provision, which, however, was not actually approved until August 21, 1934.

The emergency declaration was apparently favored by the entire trade with the exception of the Benedetto Company (which was controlled by the Gair Company, a large paper box manufacturer and paper board mill operator) and all of the dealers and peddlers who relied upon it and the Gair Company for business.*

The Gair Company secured control of prices by having the Benedetto Company send out letters periodically to all Eastern mills, quoting prices at a level as low as desired by the Gair Company. The Benedetto Company did not supply all of these mills nor could it have furnished even a small percentage of the stock needed by the Gair Company alone. Nevertheless the mills receiving these letters used these quoted prices in obtaining waste paper from their regular sources, and while the price set by the Benedetto Company may not have been the only price at which sales were made, it was generally the base market price. In those cases where the mills did not control the large packers by actual ownership, the consuming mills usually had "understandings" or "agreements" with one or more large packers. In turn the large packers or wholesalers had a great deal of influence, if not actual control, over the smaller dealers who supplied them with waste paper. This condition was due to the fact that the small dealers usually make a bare living and often find it necessary to receive financial aid from the largerdealers to tide them over periods of stress in order to keep them in business.**

In the setting of minimum prices by N.R.A. the Gair Company saw a distinct curtailment of the degree of control it had been able to exercise over its raw material prices. Consequently, through the Benedetto Company it made violent protests to the Administration against the imposition of minimum prices.***

The Trade's principal justification of its request for emergency prices was the fact that on the one hand it was helpless to control its own buying competition, and on the other hand equally helpless to resist successfully the degree of control of its selling prices exercised by the mills.****

(*) Transcript of hearings, November 2, 8, 1934; N.R.A. files.

(**) Transcript of hearings, November 2, 8, 1934; N.R.A. files.

(***) Transcript of hearings, November 2, 8, 1934; N.R.A. files.

(****) Volumes of transmittal of Emergency Orders, in N.R.A. General Files.

Emergency prices were applied to No. 1 mixed paper and folded newspaper, the two items on which the largest tonnage is handled. Despite lack of standardization these items are definable beyond the point of easy evasion.

Responsibility for setting the minimum prices rested largely with the Research and Planning Division, and since little accurate cost information was available, the prices set were arbitrary and experimental.

The first order (No. 330-A-2) was issued on August 21, 1934. After a period of 90 days another order (No. 330-A-3) was issued on September 25, 1934, clarifying and extending the original declaration. Clarification was deemed necessary to define properly "mixed paper" and "folded newspaper". Also, this order permitted resale among members of the trade at a reduced differential of 50¢ on mixed paper and $1.00 on folded newspaper.*

On November 16, 1934, a third order (No. 330-A-6) was issued, extending the emergency indefinitely and introducing further minor modifications.

Average prices per ton of waste paper were stated as:

1922 - 1929	$8.00 to $10.00
1930 - 1932	$4.50 to $ 5.00
1933 -	Rose from around $4.00 in January to a high of $15.00 in August and September; fell to below $5.00 in December
1934 -	$5.00 to $3.50**

The following figures were submitted by the Code Authority:

	Mixed Paper	Newspaper
Price paid by Waste Paper Dealer for raw material	$3.00 per ton	$5.00 per ton
Cost of conversion by Waste Paper Dealer	$4.50 per ton	$6.00 per ton
Total cost to Waste Paper Dealer	$7.50 per ton	$11.00 per ton

(*) Administrative Order No. 330-A-3, dated September 25, 1934.

(**) Memo. of W. H. Dillingham, Division of Research and Planning to John J. Connolly, Asst. Deputy, dated July 31, 1934. Volume of Transmittal of Administrative Orders.

Price secured by Waste Paper Dealers for product	$3.00 to $5.00	$5.00 to $8.00*

The Emergency Orders set minimum prices for "mixed paper" at $6.50 per ton and "folder news" at $8.50 per ton, both f.o.b. packer's plant, except that members of the Trade could sell the above to other members for $6.00 and $7.50 per ton respectively. The prices set were approximately $3.00 less on each item than those proposed by the Trade.

After the Emergency Order and its first revision had become effective, conferences were held on November 2 and 8 and December 3, 1934 to determine the advisability of extending the Order. The first conference was held to hear the testimony of a new temporary association formed in New York on October 29th by a small group within the industry for the purpose of opposing the extension of the Emergency Order. The second conference was held to hear the members of the Code Authority and selected members of the Industry who favored extension of the Order. The third conference was held by the National Industrial Recovery Board upon petition from the opposition. This meeting was attended by members of the Code Authority and industry members favoring extension.

The opposition made several controversial claims. They contended that despite the fact that dealers were moving little if any of their tonnage to the mills, the mills were managing to increase their inventories in the face of regular consumption. They offered in substantiation of these claims figures of the National Paper Board Association, copies of which were submitted confidentially to the Research and Planning Division accepted those figures and read some of them into the record of the November 2 conference. Code proponents pointed out that the totals of the various inventory columns did not, in fact, make the total figure given on the report. For instance, in one case the total recent inventory was determined by adding three mills which did not appear on the earlier report, and proponents claimed that if the tonnage of these three additional mills were deducted, a shrinkage of about 4,000 tons would result, which was at that time the estimated surplus which had backed up on the dealers in the New York area. Proponents also stated that the Gair Company had five mills drawing out of the New York markets, and that there was no way of knowing that the tonnage on hand at any individual mill was used at that mill, intimating that the company may have shifted its inventories from one mill to another to curb purchases. It is significant, as bearing on the prices established, that Mr. Orr, buyer for the Container Corporation of America, stated that in his opinion these prices were fair; but that he was withholding purchases on account of the possibility of a wide open market break following discontinuance of the Emergency Order.**

(*) Figures given by the Code Authority, which Mr. Dillingham states "are pretty well borne out by all evidence in the case." Memo of W. H. Dillingham, Division of Research and Planning, to John J. Connolly, Asst. Deputy, dated July 31, 1934.

(**) Transcript of Hearing, November 2nd and 8th, 1934, December 3, 1934. In N.R.A. Files.

During this period the Code Authority was continually seeking the help of the Administration in obtaining the assistance of consuming mills. Many of the larger mills had already given the assurance that they would gladly be bound by the emergency prices in their buying if they were assured that the "chiselers" among their own number would not be given an advantage through lack of enforcement.

The emergency was rescinded by Administrative Order 330-A-7 on December 28, 1934, approximately four months after the original declaration had been issued. The stated reason for this cancellation was that emergency prices had failed to correct the conditions they had been designed to remedy. The main factor which brought this annulment about was undoubtedly the lack of enforcement, due to the inability to secure united cooperation from the consuming mills. Some of the immediate results of this lack of enforcement were actual and suspected violations and evasions, abnormal accumulations of stock in the hands of dealers, particularly in New York and Boston, and further chaos within the trade which now sensed the Code Authority's inability to secure decisive action from the Administration in the face of the Gair Company's opposition.*

The Research and Planning Division conducted a special investigation of the effects of the emergency, and in its report of December 21, 1934, concluded that it "has not brought that relief to the trade and that aid to its employees which it was designed to give" and further that "the order appears unenforceable as long as access to the books and records of the consuming mills is not possible." The report states further in part, "other evil effects which have been attributed to the order have not been found to be, in most cases, directly attributable thereto."**

As soon as the emergency was voided, the price of mixed paper went down to as low as $1.50 per ton. Dealers who had accumulated large stocks in the hope that the mills would eventually have to buy at emergency prices, were forced to sell their stocks at prices even lower than those prevailing before the emergency. One large packing plant was purchased by the Gair Company, and undoubtedly other smaller dealers were virtually bankrupt. Generally the old alignments in the trade resumed their former relationships except for animosities engendered by the conflict of interests during the emergency. The American Paper Mills Supplies Institute was virtually dissolved and the attempted formation of a new National Packer's Association was abandoned, since cooperation from the western dealers was no longer available. Industry morale reached a new low.***

(*) Transcript of Conference held in Washington, November 8, 1934, page 131. Memorandum in files of Deputy Administrator dated December 28, 1934, from Harry C. Carr to National Industrial Recovery Board.

(**) Administrative Order 330-A-7, dated December 28, 1934.

(***) Information secured by Mr. J. J. Connolly through field investigation conducted during December, 1935.

The Administration was deluged with requests for a stay of the labor provisions of the code,* and this was finally recommended by the Division Administrator but was not granted.

(*) Deputy's files; memorandum May 10, 1935, from Deputy Director F. B. Crockard to Division Administrator H. C. Carr.

VII. ICE INDUSTRY

The original minimum price proposal submitted by this industry was adopted practically intact. The code, approved October 3, 1933, forbade the selling of ice or service below a reasonable cost, cost being defined to include raw materials, transportation thereof, manufacturing, harvesting, storage, shrinkage, delivery, depreciation, merchandising, administrative expense, insurance and taxes, as determined by standard accounting practice recognized in the industry and approved by both the Code Authority and the Administration. This provision operated in conjunction with a price filing system and with a provision forbidding the sale of ice outside the basic or normal market area at less than the lowest filed price for such outside market, regardless of the price in the usual or normal market area. A further limitation was included to prevent the sale of ice in such outside area at a price that was below the manufacturer's average cost, including transportation.

A further aid adopted to prevent price decrease was the inclusion in the code of a provision forbidding the installation of additional ice-making equipment unless a certificate of necessity was secured from the Administration.

The industry never submitted any cost formula for administrative approval, primarily because of the difficulty experienced in trying to reach an agreement between the integrated and non-integrated concerns, as to what should properly be included in such a formula. The industry consequently requested, four months after approval, amendment of the code; to provide for the declaring of price emergencies. Prices were to be based on "the lowest reasonable cost of a representative operation." Declarations of emergencies were not to apply to the industry as a whole but only to those definitely specified areas in which such action was deemed necessary to protect the interests of manufacturers, labor and consumer and only after public hearing in such areas. These emergency declarations were to be limited to a stated period. This amendment was approved on April 24, 1934.

During the life of the code, six such emergencies were declared, in Macon, Ga., New Orleans, La., San Antonio, Texas; Dallas, Texas; Fort Worth, Texas, and New York, N. Y. Administrative Orders were issued in connection with each of the declared emergencies as follows:

Macon	- Order No. 43-8, May 11, 1934;
New Orleans	- Order No. 43-6, May 11, 1934;
San Antonio	- Order No. 43-5, May 11, 1934;
Dallas	- Order No. 43-9, May 11, 1934;
Fort Worth	- Order No. 43-7, May 11, 1934;
New York	- Order No. 43-19 July 19, 1934.

In all of the above cases the emergency was granted for a period of 90 days with the provision that if it was found that sales were being made below the reasonable cost thereof, as determined by cost data submitted, a schedule of minimum prices would be established by the Administration.

A brief summary of conditions in each of the areas follows:

Macon, Georgia

The Sawyer Coal and Ice Company of Macon, Ga., extended its sales to two towns thirty miles distant from that city, which its Macon competitors had previously been exclusively supplying. The latter charged Sawyer with dumping, and cut prices in Macon in an attempt to drive him out of the market. Other manufacturers in Macon threatened to meet these cuts and a price war was imminent. An emergency was declared. On the basis of facts ascertained at the hearing, Sawyer's costs were found to be less than the new low prices set by his competitors. Hence no schedule of minimum prices was promulgated and the emergency was allowed to lapse. Research and Planning Division announced, after study, that even Sawyer's costs were too high, as an additional reason for refusing minimum prices.

New Orleans, Louisiana

Here excess capacity, - aggravated by the opening of two new plants in defiance of code provisions, and by non-adherence by other manufacturers to their filed prices - precipitated a decline in the price level. An emergency was declared and a hearing held to determine minimum prices. The data submitted revealed no selling below cost. While the study was being made a further element entered into the picture, - dumping by a manufacturer outside New Orleans. Prices of some producers fell to as low as $1.00 per ton. Accordingly a schedule of minimum price was approved for 90 days by the Administration. (*) The costs of five concerns which submitted data considered adequate were $3.03, $3.18, $3.73, $3.78 and $4.00 per ton at the platform for wholesale and heavy commercial quantities. Cost of light commercial sales, domestic sales at the platform and domestic sales delivered was correspondingly higher. The price fixed for the period of the emergency was $3.60 per ton for wholesale and heavy commercial quantities at the platform, with a graduated scale upward for the other classifications. (Wholesale and heavy commercial prices were basic in the industry, the prices of the other classifications showing varying differentials above the base price.) It was later amended to establish further classification providing for differentials between the prices at the platform and prices delivered to the purchaser. (**) The Local District Attorney cooperated, issuing a restraining order against 33 manufacturers. These two factors stabilized the market so effectively that it was deemed advisable to extend the order for an additional 90 days. (***) Inasmuch as members of the industry themselves failed to cooperate by trying to iron out their differences, this last declaration was allowed to expire, over the industry's protest.

(*) Administrative Order No. 43-22, dated August 8, 1934.
(**) Administrative Order No. 43-33, dated September 17, 1934.
(***) Administrative Order No. 43-50, dated November 14, 1934.

Upon expiration, the price again dropped and even as late as September, 1935, ice was selling at 20¢ per 100 pounds at the dock or 30¢ per 100 pounds delivered.

New York City

In New York City the industry was operating at a low fraction of its potential capacity (28 per cent). As an added unsettling factor, the distributive system was extremely complex, including manufacturers, manufacturer-wholesalers, manufacturer-retailers, wholesalers, wholesaler-retailers, retailers (usually peddlers, cellar-men or jitney box operators). As a result of these combined difficulties a price war broke out depressing prices to as low as ten cents per cwt. An emergency was declared. Of 103 manufacturers in the area, only six submitted adequate cost figures.

For these, costs per ton at platform on wholesale quantities ranged as follows: $3.00, $3.10, $3.50, $3.77, $4.73 and $5.70. After study, the Division of Research and Planning recommended that minimum prices for the period of the emergency be fixed at $3.20 per ton wholesale at the platform and $4.80 per ton wholesale delivered. Correspondingly higher prices were set for other classifications. These prices were promulgated on September 17, 1934, for a 90 day period. (*)

Although at the end of that time conditions were still more or less chaotic, some improvement was noted and the schedule was modified and approved for an additional 15 days (**) and then further modified and approved for an additional 90 day period over the protest of Research and Planning.(*** No information as to the actual effects of these orders or as to subsequent conditions in the area is available.

Dallas, Texas

In this territory the average annual load factor was also very low (30 per cent). Efforts by manufacturers to increase their share of this meagre total, aggravated by dumping of ice by firms from outside the area, led to a price war. An emergency was declared and a hearing held to establish a schedule of minimum prices. The National Association of Ice Industries worked with the manufacturers during the time the Administration had this question under advisement and announced that the situation had stabilized due to the adoption by the industry of an agreement similar to the "Ft. Worth Plan." Therefore no minimum prices were announced and the emergency was allowed to lapse.

Briefly, the Fort Worth planprovides for a system of allocation of production among 15 of the producers in the area.

(*) Administrative Order No. 43-34, September 17, 1934

(**) Administrative Order No. 43-63, dated December 24, 1934.

(***) Administrative Order No. 43-65, dated January 13, 1935.

A new sales company, known as the City Ice Company, was formed, the stock being purchased by 7 of the 15 producers. These 7 producers remained in active competition with each other and with the new sales company. They contracted to buy a certain quantity of ice from the City Ice Company in order to maintain the table of allocation of production drawn up and agreed to all parties to the contract.

Four of the companies agreed to produce and deliver to the new sales company an agreed amount of ice at a specified price, said quantity being their total production. (They were not to engage in active competition with other producers.)

The remaining four companies of the 15 participants had their productive capacity withdrawn from competition, but in return they were guaranteed a fixed price for a specified amount of ice regardless of whether they produced any or not.

San Antonio, Texas

This market was in a fairly stabilized condition until the breakdown of an agreement which bound the delivery companies to purchase cooperatively the excess production of the 25 plants in the area. When the break-down occurred prices, which for sometime had been $5.00 per ton wholesale at the dock (platform) broke to $1.00 per ton. An emergency was declared. Cost data were submitted by 5 plants. This information was so meegre as to be practically useless. However, a schedule of minimum prices was promulgated (*), effective for 90 days. This order was ineffective due to the breakdown of enforcement and to the lack of cooperation between producers and distributors. No further action was taken in this territory on the ground that if industry would not cooperate, any efforts exerted by the Code Authority or the Administration would be useless.

Fort Worth, Texas.

Here again extreme excess capacity (average load factor 25%) coupled with distributive problems broke the market, prices receding from a previous level of $5.00 per ton wholesale to $1.00. An emergency was declared, and while the Administration was studying the costs, the so-called Fort Worth plan was put into effect. Consequently no minimum prices were established. At the present time this plan is in its second year of apparently successful operation.

Although data as to conditions within the industry since the Supreme Court decision have been requested by the Deputy, no information has been received. A trade journal (Ice & Refrigeration) carried in its July, 1935, issue a statement by the former chairman of the Code Authority to the effect that the members of the industry had been drawn closer together and had learned how to do business with each other in the open and to substitute arbitration for cut-throat competition.

VIII. RETAIL RUBBER TIRE AND BATTERY TRADE

The National Tire Dealers Association, Inc., presented and sponsored

(*) Administrative Order No. 43-20, dated July 26, 1934.

the Retail Tire and Battery Trade Code.

The Rubber Tire Manufacturing Industry first attempted to include in their code both the manufacturing and distributing functions, but the Administration ruled that the manufacturing function required one code and the distributing function another.

When the preparation of the Distributing code was first considered, the representatives of the Battery Manufacturing Industry asked that they be included under the code being formulated for the Retail Rubber Tire Trade. After careful consideration by the Administration, and with the approval of the National Tire Dealers Association, it was decided that the interests of the two trades were similar and that they might present a joint code.

In order that all establishments selling tires might be represented in the formulation of the Retail code, representatives of the Petroleum Industry, large mail order houses, factory owned stores and chain store supply houses were called in.

The problem facing this trade was extremely acute. Manufacturers have a wide spread in wholesale prices to various types of retailers. For several years the industry had suffered from price wars brought on primarily by this inequality of costs and efforts of favorably fixed distributors to get more business, using their low cost to take business away from small dealers. These price wars were primarily on "commercial" business, fleet-owners buying truck tires and sometimes passenger tires in considerable quantity. Commitments for future purchases at guaranteed low prices were used; discounts ran to 8 or 12 "tens" off list. In the case of consumers or individual owners, other price cutting devices were used; extravagant trade-in allowances on used tires - 12, 18 and 24 month guarantees, etc. (*)

A price war started early in January 1934, following the approval of the Rubber Tire Manufacturing Code. This outbreak was generally charged to the action of a large mail-order house in offering trade-in allowances of from 25 to 30 per cent for used tires exchanged on the purchase of new tires. Complaints from small and large dealers and from manufacturers poured in on the Administration by the hundreds, some accompanied by newspaper advertisements, and on February 2, 1934, N.R.A. officials convened a conference of manufacturers, private brand marketers, and representatives of dealer organizations at which an agreement was reached to discontinue this practice.

No sooner was this stopped than both large mail order houses began to advertise cut prices on tires throughout the country. Manufacturers permitted and probably insisted that their dealers meet these prices, and rebated dealers a part of their loss. Tires were being sold below the manufacturers' cost in many instances.

(*) Code History, Retail Rubber Tire and Battery Trade, pp. 9-10.

It was at this point that the N.R.A. brought leaders of the industry to Washington for a conference and arranged a truce designed to stay the price war and put an end to destructive price cutting pending the approval of the Retail Tire Code.

On March 30, 1934, the representatives of the industry agreed to a truce on price cutting for a period of 40 days. During the 40 days, the Administration promised that a code would be approved for the Retail Rubber Tire Trade. This truce was approved by the President on April 19, 1934.

The Code for the Trade was approved on May 1, 1934. It included provisions for the filing of prices, and for the declaration of minimum prices in emergencies in accordance with the form suggested in the Office Memorandum of February 3, 1934.

In a report to the Administrator under date of May 2, 1934, the Deputy stated:

"While the truce has been reasonably observed, evidence has continued to come in that such destructive price cutting persists, notwithstanding the truce. The conditions which precipitated the price war still exist. The truce is breaking down at the present time. It is my judgment that unless the emergency clause embodied in * * * * the Code is immediately invoked, there will be a renewal of price wars in the Trade." (*)

It was considered advisable to discontinue all negotiations for a Retail Code until such time as it was determined just what provisions would be included in the Manufacturing Code, and a hearing on this Code was not held until December 14, 1933.

Under the Emergency provision, the Administrator declared an emergency to exist in the Retail tire Trade, and on May 3, 1934 Administrative Order No. 410-3 was issued to become effective simultaneously with the Code itself on May 14, 1934. Besides declaring an emergency to exist in the Retail Tire Trade due to destructive price cutting, the Order classified every existing brand of casing and inner tube into four groups according to quality, size and ply, for the establishment of lowest reasonable costs. These differentials were not based entirely on the quality of the product, but advertising and consumer acceptance were given consideration. (**) It was ordered at the same time that no member should change the classification of any brand, sell any brand not classified, nor use the classification for advertising purposes in any form. A minimum price for each grade, size and ply of casing, and each grade and size of inner tube, was established, below which no member of the trade could sell during the period of the emergency. The order further provided that during the period of the emergency no member of the trade should offer, use, or extend any guarantee or warranty applicable to the sale of tires or tubes except against defects in material and workmanship for a period of 90 days from the date of sale,

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(*) Rubber Tire Industry Study, page 232.

(**) Retail Code History, page 62, 63.

but this latter provision was stayed. (*)

One consequence of the order was that all dealers immediately adopted as their "going prices" the floor level prices as established by the Administration.

In connection with the effect of the emergency declaration, the following quotation from an advertisement published by the Sears-Roebuck Co. on May 9, 1934 is in point:

"You save one-third on All-State Crusaders at these prices - 3 days only, May 10, May 11, May 12 inclusive. The price on All-State Crusaders will advance about one-third on May 14. And remember Sears' Famous All - State Tires will be drastically reduced on May 14."

All-State Crusaders are Sears' third quality tires. All-State is their first quality. On the effective date of the Emergency Order, they priced both lines at the minimum or floor level price. This meant an increase in the going price of their third line, but a drastic reduction in the going price of their first line tires.

Montgomery Ward and Company broadcast the following newspaper advertisement throughout the country:

"The N.R.A., through the Retail Tire Code, effective Monday, May 14, is requiring approximately 20% price increase on Ward's Rambler tires. We would prefer to continue the low prices made possible by our economical method of selling tires. We regret that we cannot do so after the N.R.A. order fixing these prices becomes effective next Monday."

In this case also, Ward's Rambler tires were their third line.

While floor prices meant some increases in the price quoted on that line, they promptly reduced prices on first and second line tires to the minimum allowable under the Emergency Order.

Another chain store, the Gamble-Skogmo Company, operating several hundred owned and agency stores in the northwest, advertised that the Emergency Order required an advance in the price at which they were selling tires. In this case also, investigation showed that prices on third line tires only were so affected.

Within two weeks after the effective date of the Emergency Order, the two large mail-order and chain store houses had reduced their store prices to the floor level throughout the country. The Big Four tire manufacturers had met these prices wherever they had stores or controlled distribution, and were urging independent dealers to meet them, and the minimum prices had become the going price almost universally.

By July 1, the large manufacturers were allowing their smallest dealers rebates or cut-backs on sales made at floor level prices. Prices had

(*) Industry Study, page 235.

not only fallen below the general level in effect on May 14, but, insofar as sales to the individual consumer were concerned, were lower than they had been during the price wars prior to the Truce of March 30th. These facts brought out in the public hearing held on August 3, 1934.(*)

The minimum prices established by the Order were, of course, known to manufacturers and distributors as soon as printed copies of the Order were available, and in fact most manufacturers and large distributors were officially or unofficially advised of the price floors as soon as the order was approved.

The first effect was a rush to book forward orders and commitments from commercial users, for future delivery at less than the minimum price set. Both manufacturers and distributors participated in this flurry, many dealers advertised the urgency of buying "before the prices were advanced by the Code", and undoubtedly some business was secured on this basis.

The most serious situation was the publishing and distribution by the two large mail order houses of millions of "summer flier" catalogs offering tires at mail order sale, at less than the floor prices. These prices were good only on sales by mail, according to the catalog, but at least one of these concerns arranged to accept orders and make deliveries through a special department in their retail stores at such prices. These concerns claimed they had received authorization from high officials in N.R.A. for this action, in view of certain out-of-pocket expense to the customer purchasing by the mail order method. Efforts of the Deputy Administrator and of N.R.A. field officers to secure abatement of this violation were fruitless. The catalogs continued to be issued throughout the summer, and of the thousands of complaints received by the Compliance Division, none became the subject of action by the Compliance Council.

As these catalogs reached practically every section of the country, they brought protest both from small independent dealers and smaller chain store establishments. No explanation the Administration could make served to remove the impression that these concerns were receiving preferential treatment as to code enforcement. Not only did feeling run high, but the lack of enforcement served as a shield for any other retailer who chose to violate the emergency provisions. The two concerns mentioned then in turn reported such violations to the Administration as reasons for their losing business through their retail stores, where they claimed to be selling at the floor level price.

A revised emergency regulation was promulgated on August 22, 1934, Administrative Order No. 410-15. It grouped tires and tubes into five divisions according to brand and method of distribution, establishing differential minimum prices for each of these divisions.

This Order revised determination of lowest reasonable cost by raising the former floor-level prices under Order No. 410-3(**)

(*) Industry Study, pages 244, 245, 246.

(**) Retail History, page 21.

Following this Order non-compliance was the rule rather than the exception.

Dealers and distributors generally continued to sell at or about the floor level price as it had been under the first Emergency Order, not attempting to understand or to comply with the involved differential price set-up established in the new emergency regulations. The Retail Tire business ordinarily has a sharp seasonal decline in volume from September 1st on, and there are no dtat available as to the effect of the new regulations on current price levels or volume of sales. (*)

On September 28, 1934 at a conference presided over by the Deputy Administrator, the Chairman of the Retail Tire Code Authority presented a request that the Emergency provisions and minimum prices be kept in effect; that the Administration increase efforts to enforce them, and that the organization of District Control Boards proposed and launched by the Code Authority be recognized and authorized to collect funds from the trade for enforcement.

The request was supported by representatives of three small manufacturers, Dayton, Pennsylvania and Seiberling, who predicted that if the Emergency provisions were allowed to expire, the trade would be thrown into a most destructive price war, resulting in renewed losses and mortality among the smaller establishments.

The Deputy Administrator and the Director of the Research and Planning Division, in the meantime, had been informally advised by responsible officials of the Big Four Companies, that they regarded any immediate or considerable disturbance of the prevailing price level improbable.

No administrative action on the request of the Code Authority was taken and the emergency provisions were permitted to expire on October 1, 1934. (**)

IX. WHOLESALE AND RETAIL TOBACCO TRADES

Because of the inter-relation of the Wholesale Tobacco Code and the Retail Tobacco Code, experience with price control in both these industries can best be discussed concurrently.

The two codes had their inception at two national conventions held in New York in June, 1933 by the jobbers and retailers. Committees were appointed for the purpose of developing a code for the entire tobacco industry. Efforts were also made to secure the cooperation of the manufacturers of cigarettes, smoking tobacco and snuff. However, these manufacturers, while in sympathy with the general objects sought, stated they did not consider themselves in a position to negotiate such a code. (***)

(*) Industry Study, pages 265, 266, 267.

(**) Industry Study, pages 267, 268

(***) Wholesale Tobacco Code History, page 10.

Because of a delay caused by consideration of the labor provisions by the proponents of the Cigar Manufacturing Industry Code, the wholesalers and retailers submitted a joint code to the Agricultural Adjustment Administration. A public hearing under the joint jurisdiction of A.A.A. and N.R.A. was held on December 15 and 16, 1933. Under the Executive Order of January 8, 1934, jurisdiction over this code was transferred to the Administrator for Industrial Recovery. As a result of numerous conferences following the hearing it was found desirable to have two codes, one for the Wholesale Trade and another for the Retail Trade. However, the provisions were similar. The Wholesale Code was approved on June 9, 1934 and the Retail Tobacco Code on June 19, 1934. On this latter date, a code for the Cigar Manufacturing Industry was also approved.

Each of these three codes had incorporated a "Cigar Merchandising Plan", which, however, did not become operative until September 11, 1934, following the approval of the by-laws of the three code authorities. This Plan represented a marketing arrangement negotiated and concluded by the three branches of the industry. It provided for the retail price of cigars to be established by the manufacturer, and also for definite maximum discounts to be given to the wholesaler, the jobber and the retailer. It also provided for the filing of prices, including discounts, etc. with the National Tobacco Council, Inc., a trade association composed of groups from the three above mentioned industries. (*)

The Merchandising Plan was not approved without first encountering severe opposition from the various Advisory Boards. The Division of Research and Planning objected to the Plan and suggested that provisions for minimum prices based on mark-ups be established in emergencies.

The Consumers Advisory Board advised the deletion of the entire Merchandising Plan. They contended that the Plan was price fixing in its nature. (**) A copy of Consumers' objections was forwarded to the Chairman of the Special Cigar Manufacturers Committee, who answered the objections and argued strongly in favor of the Plan as a part of the code. Finally, the Consumers' Advisory Board recommended its approval, but only for a trial period of 90 days, with the proviso that a representative of the Consumers' Advisory Board be appointed as a member of the Code Authority. (***)

Shortly before the approval of the codes, Office Memorandum No. 228 was issued, and it was necessary to amend the drafts of the codes to conform to the new policy. Consequently, the codes as approved provided for stabilization of minimum prices only in the event of an emergency, and then only for a limited period.

Both trades accepted these changes with great reluctance and expressly stated that the new provisions did not meet the true situation and were not adapted to the correction of the existent evils which arose primarily

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(*) Wholesale Tobacco Code History, pp. 26, 50.

(**) Letter, Haddock to Taft, 4/10/34, In N.R.A. files.

(***) Wholesale Tobacco Trade Code History.

from a price war in cigarrettes and from the use of tobacco products as loss leaders. (*)

In 1928, in order to liquidate a large quantity of leaf tobacco representing an inventory of some $2,000,000, it was decided to produce cigarettes to sell at 10¢ a package. This idea quickly spread through the industry, and the inventory was soon liquidated and other cheap tobacco purchased for the new brands which had sprung up almost over night. Before the so-called "Big Four" (American, Liggett and Meyers, Reynolds, and Lorillard) realized what had happened, the 10¢ cigarette had acquired 26% of the cigarette consumption of the country. There is a very scant profit margin in the manufacture of a 10¢ brand, and advertising had to be virtually eliminated. (**)

In order to meet the competition of the 10¢ brands, the retail price of the 15¢ cigarettes was reduced until finally they were selling also at 10¢. The greatest sufferer in this price war was the retailer. (***)

Approximately 85% of all cigarettes sold in the U.S. consist of four popular brands, Lucky Strike (American Tobacco Co.), Chesterfields (Liggett and Myers Tobacco Company), Camels (Reynolds Tobacco Company), and Old Golds (P. Lorillard & Company). At the time the emergency was declared, the manufacturers list price was $6.10 per thousand, and it was the universal pracitce of manufacturers to allow 10% trade discount and a 2% cash discount ($5.38). All four of these brands were highly advertised at the expense of the manufacturer, and a tremendous demand had grown up as a consequence.

Department stores, grocery stores and others not dependent upon the sale of tobacco or cigarettes for their profits were quick to recognize the fact that customers are price conscious, and it became a common practice among them to sell cigarettes as loss leaders. The cost of popular brand cigarettes to retailers varies from $1.076 per carton to as high as $1.14 because certain retailers are permitted to buy direct from wholesalers. It is estimated, however, that not more than 15% by volume are able to avail themselves of this privilege. During 1933 those retailers using cigarettes as a loss leader reduced the price of cigarettes in some cases to as low as 59¢ a carton, and there were innumerable cases of sales at $1.00 a carton. Inasmuch as the very purpose of these sales was to attract customers to the store, they were highly advertised and had the effect of forcing the small tobacco retailer either to sell his merchandise at a loss or to retire from the cigarette business entirely.

It was felt that by establishing a minimum price for cigarettes their use as loss leaders would be eliminated, and the small retail tobacco dealer would be enabled to make some return on his investment. Consequently, immediately following the approval of the codes, the code authorities declared an emergency to exist, and passed a resolution that Merchandising

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(*) Wholesale Tobacco Trade Code History, page 67.

(**) Statement Oliver J. Sands and Daniel T. Bertrand, Tobacco Industry Sec.

(***) Wholesale Tobacco Trade Code History, page 24.

Facts, Inc. (a statistical bureau) and the Division of Research and Planning be requested to act jointly as an impartial agency to investigate cost (including the cost of wholesale distribution) and to recommend to the Administration a basis for determining minimum prices for cigarettes, tobacco and snuff.

Merchandising Facts, Inc. found (*) the position of the wholesale tobacco dealer was closely interwoven with that of the Retail Tobacco dealer and that an emergency which threatened the existence of the retail tobacco dealer would therefore tend to create an emergency in the wholesale trade as well. They estimated that approximately $60,000,000 of retailers' credits were carried on the books of tobacco wholesalers, a sum approximately twice as much as the annual payroll of that trade, and that this hazard presented an obvious threat to employment; that the establishment of minimum mark-ups would help provide a solid basis upon which principles of liquidation of this indebtedness might be undertaken.

Research and Planning Division did not concur with Merchandising Facts, Inc. in recommending declaration of an emergency.

The report of the impartial agency relative to the costs of retail distribution showed that such costs were approximately 20% of the selling price, but calculations based upon this percentage indicated that it would be necessary to increase the price of cigarettes to the consumer to a level above that generally prevailing should such a percentage be adopted for the minimum. A study of cigarette prices in those states unaffected by taxes indicated that the prevailing price was 13¢ a package, two packages for 25¢, and $1.20 a carton on popular brand cigarettes, and 10¢ a package on the so-called 10¢ brands. Consequently, the emergency order was drawn so as to permit sales at this figure. (**)

The Emergency Order was approved July 12, 1934 and became effective on July 16, 1934, to remain in effect until October 13, 1934 unless otherwise ordered by the Administrator.

It read in part as follows:

"1. In sales by jobbers or sub-jobbers to tobacco retailers, the minimum price shall be the net purchase price to such jobber or sub-jobber (after deduction of all discounts except cash discounts) plus one per cent (1%) thereof.

"2. In sales by jobbers to sub-jobbers, the minimum price shall be the net purchase price to such jobber (after deduction of all discounts except cash discounts.)

(*) Cost of Retail Distribution of Tobacco Products - about Mar. 20, 1934.
Present Condition of the Retail Tobacco Trade - about June 15, 1934.

(**) Retail Tobacco Trade Code History

"3. Notwithstanding the foregoing provisions, the total percentage added to the wholesaler's purchase price (after deductionof all discounts including cash discounts) need in no case be greater than three and one-tenth per cent (3.1%) in the case of sales to retailers, and two and one-tenth per cent (2.1%) in the case of sales to sub-jobbers."

The Emergency Order established minimum retail mark-ups on manufacturers' list prices of 6½% of $6.10 per thousand in the case of the Big 4 Brands, and 5¼% on the manufacturers' list prices of $4.75 in the case of 10¢ brands. (*) This was equivalent to prices per package of 20 of 13¢ for the former and 10¢ for the latter. Quantity discounts were allowed, of 5% for sales of 25¢ and more and 8% for sales over $1.00 (i.e., two package and carton sales).

Immediately upon the publication of the Emergency Order a number of protests were received. It was contended that prior to the Order, jobbers were permitted a discount of 10% plus an additional 1% for cash. In order to conform to the Order, the jobber could not allow more than a 10% discount, and due to the competition existing in the wholesaling of cigarettes, the sub-jobber was limited to a 1% minimum mark-up. (**)

The Order was amended as follows:

On September 8, 1934, Administrative Order #466-9, providing that a state stamp tax must be added to the minimum price whether the seller were located in the state or not.

On September 15, 1934, Administrative Order #462-11 changing mark-up to 1.5% in the case of sales by jobbers to sub-jobbers, and 1.6% by sub-jobbers to retailers.

On October 10, 1934, Administrative Order #466-14, permitting the same minimum price for the same quantity of cigarettes regardless of the method of packaging.

On October 10, 1934, Administrative Orders #466-15 and #462-14, extending the Order until January 11, 1935.

On January 9, 1935, Administrative Orders #466-20 and #462-20 extending the Order until January 26, 1935.

On January 24, 1935, Administrative Orders #466-21 and #462-21 extending the Order until March 20, 1935.

(*) Report on Price Regulation, Daniel Bertrand, December 18, 1934.

(**) Wholesale Tobacco Trade Code History.

On March 29, 1935, Administrative Orders #466-23 and #462-24 continuing the Order until April 30, 1935.

On April 23, 1935, Administrative Order #463-25 continuing the minimum mark-ups.

On April 29, 1935, Administrative Order #463-25 continuing the Order until June 16, 1935, and changing the mark-up to 1% in the case of sales by jobbers to sub-jobbers, and 2.1% in the case of subjobbers to retailers.

In order to place price control on a more permanent basis, and to extend price protection to cigarettes other than the brands previously covered and to other tobacco products as well, an Amendment to the Retail Code was approved on April 23, 1935. This amendment prohibited sales of any cigarettes at less than 9.1 per cent off manufacturers list, and of any other tobacco products at less than 7.1 per cent off manufacturers list. (*) These prices corresponded to the prevailing invoice costs of these products to the less favored retailers. The combined effect of this Amendment and of Administrative Order 266-25, which was signed on the same day, was to maintain the previously established minimum retail prices for the popular brands and to extend protection to the extent of banning sales of all other tobacco products below their invoice cost to the independent retailer.

During the existence of the Emergency Order little difficulty was encountered in enforcing it. (**)

In contrast to the apparent effectiveness of price control in the cigarette field, the control of cigar prices was unsuccessful. No sooner had the Cigar Merchandising Plan become effective than difficulties arose in connection with its enforcement. As a result the code authorities for the three tobacco codes finally appointed a committee to study and recommend some method for altering the Plan. A proposal was finally evolved and a public hearing was scheduled for May 13, 1935, but in view of the fact that the Schechter case was then pending in the Supreme Court, the date was postponed. (***)

A petition was presented at the January, 1935 price hearings, signed by approximately 400 retailers, with employees ranging from 1 to 573, which asked for a continuance of mark-up provisions on certain tobacco products, to prevent immediate return to wilfully destructive price cutting and other destructive practices. It was claimed by the petitioners that a discontinuance of the provisions would jeopardize the welfare of their

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(*) Amendment No. 1, Code for the Retail Tobacco Trade, April 23, 1935.

(**) Retail Tobacco Trade Code History.

(***) Retail Tobacco Trade Code History.

employees and caus widespread hardship. (*)

A petition was also presented by the Secretary of the National Association of Tobacco Distributors, signed by approximately 650 firms, located in practically every state in the Union, representing tobacco stores, candy and tobacco stores, drug companies, grocery companies, both manufacturers and jobbers, asking that the minimum mark-ups be retained and stating that general chaos would inevitably occur in the absence of such provisions. (**)

X. IMPLICATIONS OF THE EMERGENCY DEVICE

Price control through the emergency device was essentially a synthetic concept developed within N.R.A. as a compromise by N.R.A. between the view that price competition in general should be left untrammeled and the belief that, in certain cases, specific and highly exceptional conditions had developed which prevented any orderly or fair determination of price in the market, with the consequence that code labor standards were imperiled.

Such exceptional cases might arise where a price panic was forcing price to a level substantially lower than the demand situation would warrant, or where the tactics of some individual or group were menacing the existence of a substantial portion of an industry.

In cases of this nature it was hoped that the declaration of an emergency would in effect constitute a truce during which the industry might be permitted to evolve its own more permanent solution. Furthermore, where the price cutting was distinctly predatory in nature, the emergency declaration would be equivalent to serving notice that N.R.A. was determined to prohibit such unfair tactics.

It was believed that in cases of this nature the temporary limitation of price competition might be the only effective way of forestalling monopoly and protecting small enterprise.

In practice the emergency device was extended to at least one case (the Tobacco Trades) in which not a temporary but a permanent condition had to be dealt with. N.R.A. policy, as has been indicated in Chapter IV, was not opposed to banning the use of the loss leader, which was the specific problem presented in this instance. A temporary prohibition of loss leader sales could be expected to operate only during its life. The moment the ban was removed loss leader selling was bound to re-appear and this actually occurred immediately after the Schechter decision.

(*) Transcript, Price Hearing, Vol. 1, pp. 1-24.

(**) Transcript of Public Hearing, Price Provisions in Code of Fair Competition. Vol.1, pp. 98-99.

The amendment to the Retail Tobacco Code, which was approved on April 23, 1935, represented a decision by N.R.A. that the conditions in this case required a more permanent remedy.

One thing appears significant with reference to N.R.A. policy as to the prices actually set in emergencies in most of the other cases. Every effort was made to insure that the price floor would be a true floor above which price competition took place. Thus, in the Cast Iron Soil Pipe Industry the minimum price set covered only the direct costs of the lower cost producers. In practically all other cases, N.R.A. set the prices at as low a figure as possible without completely destroying the intended effect of the declaration.

XI. EFFECTIVENESS OF DEVICE

Considering now the effectiveness of the device in meeting the problems toward which it was directed, it seems possible to draw the following inferences:

1. Where the problem was occasioned by a deliberate price cutting campaign, initiated by one or two members of the industry, as in the Cast Iron Soil Pipe and the Agricultural Insecticide and Fungicide Industries, the declaration of the emergency apparently had the desired effect. Prices were steadied and price wars ended, and the effects of the declaration persisted after the period of the emergency had expired. In these two cases the industry apparently succeeded in working out its own solution and in restoring some degree of price stability.

It is possible that those interests which had been instrumental in initiating the price wars which occasioned the emergency declarations decided, during the enforced truce, that their own better interests lay in conforming with the prevailing price level. Whether this conviction arose from the probability that price cuts would be immediately met, so that they would be unable to benefit from securing a greater share of the industry's volume, or whether other considerations were more important, is uncertain; it is the results rather than the motives with which this study is concerned.

2. Where the difficulty was primarily occasioned by the use of a standard product as a loss leader, as in the Wholesale and Retail Tobacco Trades, and where the companies engaging in loss leader selling were large and responsible units directly dependent upon the retention of the public good will, the declaration of the emergency also had the desired effect in that price cutting ceased. Here, however, immediately after the Schechter decision, the cutting recurred. The problem in this case, then, was apparently not susceptible of solution by any temporary device.

3. In the Ice Industry the price dislocation had a fundamental basis in the contraction of markets through competition by substitutes. Due to ease of entry there were a large number of comparatively small units. Here the effect of the emergency declaration was not uniform. In certain areas the declaration appears to have been successful and to have permitted the industry to work out its own solution on the basis of allocation of production. (We are not at present concerned with the economic merits of this solution). In other areas, where the members were unable to cooperate, the emergency failed of its intended effect.

4. In two other cases where ease of entry had resulted in a large number of small units mutually suspicious and extremely vulnerable to consumer pressure - the fur dressing and dyeing and waste paper trades - the emergency declaration also failed of its purpose. Where there was a deliberate attempt by a large consumer to retain the power to dictate prices and where this consumer encouraged industry members to violate provisions of the declaration of emergency, as was alleged in connection with the wast paper trade, failure was inevitable.

5. In the retail rubber tire and battery trade, where the concerns at whom the declaration of emergency was directed were determined to maintain their advantages, and where lack of standardization facilitated evasion, the emergency declaration failed to accomplish its purpose.

CHAPTER VIII

PRICE CONTROL THROUGH COST PROTECTION

I. THE DEVICE - EXTENT AND IMPLICATIONS

A. Nature and Implications of the Device

Superficially, the prohibition of sales below cost seems a very different thing from the enactment of a fixed price floor. It has been shown that the idea that selling below cost was a preventable evil was frequently expressed during the hearings and debates preceding enactment of the N.I.R.A., and that, during the early stages of cost formulation, cost protection was suggested by N.R.A. officials as an acceptable alternative when code proponents advocated more drastic restrictions.

In its simplest form, cost protection would merely prohibit sales below individual cost of production. Immediately, however, the need of modification of this principle became apparent. If no member is allowed to sell below his own cost, the low cost producer is granted a potential monopoly and the high cost producer is in danger of being frozen out of the market. Consequently, it was necessary to permit members to sell below their own individual costs to meet the price competition of lower cost producers.

In principle, then, the device in this form virtually establishes a price floor at the level of the cost of the most efficient producer in the industry - provided he wishes to sell down to his own cost; or, if he does not choose to exercise this privilege, at the level of the most efficient producer who does. Cost protection, then, implies a minimum price level no less surely than direct minimum price fixing.

None the less, provisions of this character would, in general, insure degree of flexibility in the price structure. It was believed that a price floor so determined would be sufficiently low to allow price competition above it and to insure to the consumers some of the advantages accruing to greater efficiency.

But these very considerations did not appeal to code proponents. They were not interested in any abstract concept of the impropriety of selling below one's cost. It was price and not cost which they were endeavoring to determine. The goal was a price at which the bulk of the industry could operate profitably. Cost was merely a yardstick for computation, and for this purpose the cost of the lowest cost producer was not at all satisfactory.

To retain the plausible cost concept, and yet to gain authorization to set a price floor at a level satisfactory to the industry as a whole, a number of proposals were advanced. In general these centered about prohibiting selling below "average" or "representative" cost or an equivalent term. To justify these proposals it was frequently contented that the lowest cost producers possessed certain peculiar advantages by reason of location, integration, the purchase of bankrupt assets, or the like; and it was implied or explicitly stated that these special advantages were somehow unfair.

But in all cases it was abundantly clear - and perfectly logical - that the aim was not so much to prohibit sales below cost, but rather to set minimum prices at a level at which the bulk of the industry could operate profitably.

In the majority of cases these efforts were unsuccessful, at least as far as the code provision itself was concerned. With a few exceptions, individual cost, with a provision for meeting competition, was the basis approved. But all was not yet lost. Cost could be so defined as to achieve by indirection what had been impossible to secure directly. The conflicts resulting from these attempts will be described shortly. Enough had been said to reveal clearly that cost protection differed merely in form, rather than in substance, from direct minimum price fixing.

It is necessary, here, to differentiate between prohibitions against sales below cost in non-distribution and in distribution codes. In the latter group, the object of the provision was usually quite specific, to secure the nearest thing to resale price maintenance N.R.A. would allow. It generally represented an attempt to eliminate or minimize either the use of the loss leader or the advantages enjoyed by favored distributors or channels of distribution. The provision itself was usually based on invoice cost, either with or without a specified markup, but in a few cases the manufacturer's or wholesale list price was the criterion.

B. Frequency of Cost Protection Provisions in Codes

As stated previously, cost protection was far the most frequently used device for price regulation. 323 basic and 98 supplemental codes, a total of 421, contained this provision in some form. These may be divided into the following groups.

383 basic and supplementary non-distribution codes prohibited selling below cost. Of these:

361 prohibited sales below individual cost, usually with a provision for meeting competition;

7 prohibited sales below lowest reasonable cost;
4 " " " reasonable cost;
7 " " " lowest representative cost;
4 " " " average cost.

38 distribution codes contained provisions against selling below cost. These included:

7 based on individual cost;
9 " " invoice cost plus transportation;
3 " " " " " individual markup;
13 " " " " " uniform markup;
6 " " manufacturer's or wholesale list price.

C. Cost Accounting System.

1. Problems Involved in Formulation

In order to implement these cost protection devices it was necessary, as indicated in Chapter IV, to gear them to some standard means of determining cost. In all but a very few cases the cost system was to be prepared by the Code Authority and submitted to N.R.A. for approval.

Almost as soon as the first system was submitted, the conflict of interest between the representatives of industry and N.R.A., to which reference has been made, became apparent. Failing in their attempts to secure administrative approval of a provision specifying some form of general industry cost, the Code Authorities turned their efforts to so formulating their cost accounting systems as to prevent the individual cost provision from being carried to its logical conclusion - that of setting the price floor at or near the level of the lowest cost producer. The Cost Accounting Unit of the Research and Planning Division was the N.R.A agency charged with the duty of passing on proposed cost systems, and bore the brunt of these attempts to turn cost protection into a price fixing instrument.

The nature of the conflict resulting from these efforts, as seen by the person probably best qualified to judge it, is revealed in the following extracts from an article written by Mr. Orton W. Boyd, Chief of the Cost Accounting Unit.

> The reader will recall that the typical Code forbade each of its members to sell his product or services at less than cost, except for the purpose of meeting the competition of another who is not selling below his individual cost. In other words, the line of demarcation between legitimate competition and "destructive price cutting" was placed exactly at the lowest individual cost of production and marketing. The establishment of the barrier against predatory price policies at this level was by no means accidental. It was deliberately intended, in order that any producer may feel free to translate all of his natural advantages into lower selling prices. In other words, no protection for managerial inefficiency was contemplated, no shield for extravagance was to be raised, and no obstacle in the path of progress was to be erected.
>
> However, many of the cost accounting methods presented were so drawn up as to require the low cost producers to set their cost levels at amounts in excess of the minima which would result from the application of the ordinary rules of accounting. In some instances, these proposals were based upon the desire to eliminate the competitive power resulting from artificial advantages; in other cases, these efforts were designed for the protection of the smaller establishments. Again there was the desire to surround the average establishment with a protective wall against the onslaughts of those enjoying superior financial or geographical advantages. And finally,

there was the feeling that all the members of an industry must be considered as one and no one should be permitted to make too great inroads into the business of his competitor.

The principal artificial advantage which the cost system sponsors sought to eliminate pertained to the depreciation charge. It was recognized that many firms had acquired plants and equipment at the abnormally low prices of a bankruptcy sale. Again, the processes of reorganization through which many enterprises have passed effected a devaluation of the capital assets. And finally, there were cases in which serviceable plant and equipment had been completely written off in the depreciation charge of prior years.

For the purpose of eliminating any competition arising from conditions such as these, the advocates of many cost systems proposed to base the depreciation charge upon present replacement values. Some suggestions would have established this basis as the universal rule for the industry; other systems sought only to invoke this rule in the exceptional cases.

However, in formulating policies, the Administration has turned a deaf ear to these pleas. The no-selling-below-cost provisions were designed solely for one purpose, namely, the curbing of destructive price cutting. The limitation of price reductions for any other purpose would be an exercise of a power not contemplated by Congress in the enactment of the Industrial Recovery Act. The Administration therefore should "bend backwards" in withholding approval of cost proposals which would set minimum selling prices at a level higher than any individual's cost of production and marketing.

In view of these and other considerations, the Administration's policy is that the depreciation charge, for the purpose of determining minimum selling prices, shall not be higher than that amount which would ordinarily be ascertained by the application of generally accepted accounting rules. In other words, the basis for the depreciation charge shall not exceed original cost and the rate shall be based upon the probable life of the asset. Conformity to this policy is usually expressed by a statement in the cost finding formula to the effect that the depreciation charge shall not exceed the amount which is allowable as a deduction in the Federal Income Tax Return.

A few cost accounting systems proposed schedules of depreciation rates to be used by all members of an industry. Unless these rates are extremely low such a proposal might conceivably establish a price level which exceeds the costs of some members of the industry. Consequently, the Administration has generally objected to provisions of this nature; it insists that each member of the industry should be permitted the right to employ such depreciation rates as are warranted by its own experience and operating conditions.

It appears that many large or strong establishments made heavy purchases of raw materials during the year 1933 in the anticipation of expected increases in the price levels. These concerns would, on a rising market, enjoy the competitive benefits of a cost lower than those establishments which follow a "hand-to-mouth" purchasing policy. The framers of a great majority of the proposed cost accounting methods felt that an advantage obtained in this manner was grossly unfair and that any reductions of the selling prices of finished products attributable to this situation would constitute "destructive price cutting." Consequently, these cost systems provided that the minimum basis for the valuation of raw materials embodied in the finished product shall be their current replacement costs.

The current replacement value basis was invoked also for the equalization of competitive conditions between integrated and specialized establishments. A concern which carries on such activities as mining and fabricating would in all probability develop a lower cost for the raw materials of the manufacturing department than is paid by those who confine their operations solely to the second-named function. The "specialty" firms believed that this occurrence would confer an unfair advantage upon their integrated competitors. Consequently, they sponsored cost accounting provisions to the effect that the output of the mining department should be charged into the fabrication processes at not less than at current replacement value.

At first, the Administration was not averse to the use of replacement values; it placed its stamp of approval upon several cost methods which contained this provision. However, it became convinced that these proposals were objectionable in several respects. First, there must be considered the fundamental rule that the price levels established by the approved methods should not exceed the cost for any manufacturer as established by the customary accounting procedures. Second, it was not within the province or scope of authority of the Administration to restrict such legitimate occurrences as wise buying policies of integration.

Consequently, the Administration in July, 1934, issued a policy memorandum to the effect that for the purpose of determining the cost below which sales may not be made, the materials shall be valued at current replacement costs or at their actual cost, whichever is the lower.

One of the important chapters in the development of N.R.A. cost policies related to the inclusion of interest as an element in the cost of manufacturing and marketing a product. A decision to eliminate this item was made almost at the very outset of the program. It cannot be said that the inclusion of this item as a cost element is a feature of generally accepted accounting practice. Many textbook writers and practitioners recommend the use of income sheets in which the cost of goods sold and the operating expenses (i.e., items directly attributable to manufacturing and

selling activities) are separated from interest and other non-operating deductions. There are other accountants who look at the accounting problem primarily from the viewpoint of management. To them, interest falls into the same category as dividends; it is a return on the funds which had been committed to or invested in the enterprise.

One very important problem in the determination of the lowest individual cost below which sales may not be made, relates to the volume of production and its effect upon unit costs

* * * * * * * * * * * *

Thus, we have three bases for the calculation of unit costs; at the actual volume of production, at the anticipated increased volume resulting from the price reduction, and at the maximum normal volume. The question now arises as to the method which should be specified in an approved formula for the determination of the cost below which sales may not be made. What is the position of the Administration in this matter?

N.R.A. policy distinctly disapproved the use of actual current volume as the sole basis for the determination of minimum selling prices. The conditions which brought about the low volume of the present day cannot be overlooked. The Administration insists that the rates used in applying the indirect expenses, such as factory overhead, and administrative and selling costs, be determined on the basis of the normal or average utilization of productive facilities. In other words, no one may be guilty of "destructive price cutting" if he excludes idle or unused facilities in the determination of that cost below which he does not sell. Or, according to some approved cost methods, minimum selling prices, based upon an average volume of production throughout the course of the business cycle, are permitted. (*)

Supplementing Mr. Boyd's statement, a further argument advanced by Code Authorities for the use of current replacement cost as against "cost or market whichever is lower" as the basis for minimum price determination should be noted. It was pointed out that, due to the impossibility of earmarking inventory, there was no way of determining whether raw materials actually used in current manufacturing had been purchased at an earlier or later date. It was, therefore, contended that valuation at current market was essential in order to permit any adequate check on compliance.

The policy memorandum to which Mr. Boyd refers in this connection was Office Memorandum No. 265, issued on July 18, 1934, which stated:

(*) Uniform Cost Accounting Systems under N.R.A, by Orton W. Boyd, C.P.A., The Certified Public Accountant, November, 1934.

"N.R.A. policy favors 'cost or market, whichever is lower' as the normal basis for valuation of materials wherever they appear in the cost formulae which have been provided in approved codes."

2. Number of Cost Systems Approved

Despite the large number of codes requiring the submission of cost systems to N.R.A., actual approval was only granted to 39, including 36 basic and 3 supplemental codes. This was in part attributable to the wide difference of opinion which has been shown to have existed between Code Authorities and the Cost Accounting Unit of the Research and Planning Division (which represented the Administration in the negotiations) as to the items which could be properly included in the mandatory cost systems. This, and the fact that the Unit was seriously undermanned and was unable to cope effectively with the demands made upon it by the almost simultaneous submission of an overwhelming number of systems, precluded any possibility of rapid action. By June 7, 1934, only sixteen mandatory cost systems had been approved. On that date Office Memorandum No. 228 was issued. In this memorandum NRA price policy definitely rejected any further extension of the cost protection device, although the Administrator shortly thereafter in response to protests by industry, explained that this change in policy was not retroactive. Nevertheless, the Cost Accounting Unit and the Research and Planning Division took the position that any further approval of mandatory cost systems designed to effectuate no-selling-below cost provisions was contrary to policy. However, this stand was not taken immediately, with the result that 23 systems were approved between June 7, 1934, the date on which Office Memorandum No. 228 was issued, and October 25, 1934, when the last mandatory cost system was approved.

The Research and Planning Division, of course, had no final power to determine policy. It did, however, express its objection in its memoranda reporting on proposed cost systems. The question of policy arising was submitted to the Advisory Council. The Council expressed the opinion that approval was counter to current policy, but that it was for the N.I.R.B. to determine whether NRA should consider itself bound by the commitments contained in the approved codes to the extent of acting favorably on the proposed cost systems. The Council found that either position was tenable, but that further approval of cost systems was contingent on a positive declaration by the Board to the effect that such approval was proper. The N.I.R.B. did not render such a positive declaration, with the result that no further mandatory cost systems were approved.

In addition to these 39 approved systems, of which only 29 were still in effect by the time of the Schechter decision, cost rules were granted preliminary approval in six cases. These approvals were granted informally during the early pressure of codification and were not subsequently ratified through the issuance of an Administrative Order.

In addition to these, insofar as known, cost systems were approved by Code Authorities in six cases in which administrative

approval was not prerequisite. In two other codes, the Code Authority was permitted to establish preliminary cost rules on its own initiative, and in at least one of these cases (the Paper and Pulp Industry) such permission was utilized by the Code Authority to develop and prescribe complete cost rules and to avoid submission of any formal system to NRA.

In total, then, despite the wide inclusion of no-selling-below-cost provisions in codes, these were virtually nullified in all but 53 cases through failure of NRA to approve the cost systems necessary to effectuate them. In addition to these, loss limitation provisions were effective in the Retail Code and several other distribution codes in which approval of a cost system was not required.

A complete list of these codes is contained in Appendix III. These included a few industries of major importance, such as Graphic Arts and Electrical Manufacturing, and a large number of smaller ones. The ability of an industry to secure approval of its cost systems was in no sense related to its importance or character, but was essentially fortuitous, depending upon its success in getting "under the wire" prior to the reversal of policy by NRA.

II. THE INDUSTRIES STUDIED

Studies of the operation of the cost protection device have been made for the following seventeen of these 53 codes:

1. The Limestone Industry
2. The Malleable Iron Industry
3. The Screw Machine Products Industry
4. The Throwing Industry
5. The Fertilizer Industry
6. The Asphalt Shingle Industry
7. The Paint, Varnish and Lacquer Industry
8. The Fire Extinguishing Appliance Mfg. Industry
9. The Plumbing Fixtures Industry
10. The Hardwood Distillation Industry
11. The Rubber Tire Manufacturing Industry
12. The Commercial Relief Printing Industry (Graphic Arts Code)
13. The Coffee Industry
14. The Furniture Manufacturing Industry
15. The Leather and Fancy Leather Goods Industry
16. The Canvas Goods Industry
17. The Paper Distributing Trade

In only 10 of these 17 codes did the no-selling-below-cost provision have any appreciable effect on the market, either for a shorter or a longer period. In 3 cases no serious effort was ever made to invoke it. In 4 more its application resulted in complete and obvious failure. In presenting brief outlines of code experience in each of these cases, the following order has been adopted:

(1) A review o f the 3 cases in which the provision was never actually applied, and of the reasons for this neglect;

(2) A summary of the 4 cases which resulted in immediate failure, and of the reasons therefor;

(3) An analysis of the 10 cases in which some degree of success was attained.

III. CODES IN WHICH COST PROTECTION WAS NEVER SERIOUSLY INVOKED

In 3 of these 17 industries, the codal prohibition against sales below cost was never seriously invoked as a device for price control. These 3 industries are:

(1) The Asphalt Shingle and Roofing Industry;

(2) The Furniture Manufacturing Industry;

(3) The Rubber Tire Manufacturing Industry.

The reasons which operated in each case to deprive the cost protection clause of any real importance will be reviewed briefly.

A. The Asphalt Shingle and Roofing Industry.

In this industry the cost protection device never played an important role because it was entirely redundant. Why the industry requested its inclusion in the code is not entirely clear; it is possible that the proponents hoped that N.R.A. would approve a definition of cost more restrictive than policy actually permitted. The industry had other and more effective means of maintaining price stability. Average annual wholesale price indexes for prepared roofing between 1929 and 1935, based on 1929 = 100, were:

1929 - 100.0
1930 - 102.3
1931 - 106.2
1932 - 97.2
1933 - 99.6
1934 - 107.3
1935 - 113.0 (9 months) (*)

Judging from these data, the industry required little aid from N.R.A. to maintain its price structure. This stability is in part explained by the fact that the bulk of the industry's products is

(*) Statistical Materials, the Asphalt Shingle and Roofing Industry, Industry Statistics Unit, Division of Review, N.R.A., January, 1936.

manufactured under a patent licensing arrangement. (*) Furthermore, in 1929, the industry initiated an open price system with a liquidated damages agreement for enforcement. Approximately 80 per cent of the industry membership, representing between 85 and 90 per cent of the volume, were included in this agreement. (**) In 1930, as a result of an investigation by the Department of Justice and the Federal Trade Commission, this scheme was dropped, and a system of reporting past prices was substituted without the liquidated damages feature. (***) Industry meetings to discuss prices, which had been initiated earlier, continued, and price stability does not appear to have been appreciably impaired.

Under the Code, which was approved on November 6, 1933, an open price system was established. Coupled with the degree of patent control exercised by the Patent and Licensing Corporation, a subsidiary of the Flintthite Company (the dominant producer), this appears to have resulted in raising the average price level during 1934 approximately 7 per cent above the 1929 figure. (****)

As a consequence, all the companies in the industry were presumably selling well above cost, and there was no occasion for the use of the cost protection device.

B. Furniture Manufacturing Industry -

The Code for the Furniture Manufacturing Industry which was approved December 7, 1933, contained the following clause:

"It is hereby declared to be the policy to be followed by all members of the industry to refrain from destructive price cutting."

The Code prohibited the sale, offer or exchange of products of the Industry at less than their cost to the furniture manufacturer, except to meet existing competition of lower cost producers on products of the same or equivalent design, character, quality or specifications. A manufacturer was also permitted to sell at any price discontinued patterns (close outs) which he would not again be permitted to manufacture. In the case of orders for future deliveries, the term "cost" was to be based upon the cost at the time of acceptance of the order.

The Code empowered the Code Authority to establish uniform cost accounting methods for the Industry, subject to the approval of the Administration. The Code Authority was also empowered to issue schedules of maximum trade discounts or allowances for volume purchases to govern the sales of furniture by furniture manufacturers, subject to approval of the Administrator.

(*) Transcript of Hearing, September 21, 1933, p. 50.

(**) U.S.A. vs. Asphalt Shingle and Roofing Institute et al, U.S. Sc. Dist. N.Y. in equity 57-162

(***) U.S.A. vs. Asphalt Shingle and Roofing Institute et al.

(****)Index of Wholesale Prices, B.L.S.

The above pricing provisions differed from those presented by Code proponents at the public hearing, in that the original proposal would have based price minima on weighted average cost of production. The Mail Order Association of America objected on the ground that such provision would protect the inefficient producer and guarantee excessive profits to the efficient producer. It further contended that the practice of mail order houses of buying for cash and advertising through catalogues at their own expense relieved the manufacturer of any charges for credit and advertising expense which would be included in an "average" cost. The Association consequently advocated that individual costs be substituted for weighted average costs.(*)

The hearing produced advocates of code provisions designed to prohibit the sale of furniture by manufacturers direct to consumers and the consigning of merchandise to retailers. Direct to consumer sales by manufacturers, with the exception of certain contract equipment, was a continuous cause for complaint by the retail trade.(**)

Cost protection was advocated by Code proponents to remedy conditions alleged to result from overproduction, lack of cost knowledge, piracy of designs, lack of uniformity in sales terms, and to a large extent to frequent style changes resulting in close-outs and discontinued patterns.

Testimony at the public hearing indicated that Code proponents advocated production control as the primary means of improving the price situation, with cost protective provisions secondary in importance. Such proposals resulted in the adoption of a provision in the approved code penalizing second and third shift operations by a 50% increase in wages over single shift wage rates.(***)

From the date of Code approval, December 7, 1933, there was considerable delay before a cost formula was finally approved by the Administration on August 13, 1934. The Code Authority criticized N.R.A. for delaying approval, claiming this situation had had a bad effect on the industry. The Code Authority advocated that the formula provide for the valuation of materials at current market prices. It claimed that there had been a marked advance in lumber prices; that any manufacturer who wanted to invade a certain market or raid another manufacturer's customer list by offering a shipment below cost, had in his desk drawer an invoice for lumber bought at depression prices; and that no one could tell from an inspection of the furniture whether it truly contained low cost lumber or not. It was claimed that valuation of materials at current market prices was essential to make it possible to compute costs definitely.

(*) Transcript of Public Hearing, pp. 121-126

(**) Transcript of Public Hearing pp. 231 to 245
" " " " (Appendix) pp. 32 to 44

(***)Transcript of Public Hearing, Oct. 9, 1933, pp. 3-10, 33, 34, 58.

The Mail Order Association of America objected to the current market price basis on the ground that its members distributed their catalogs twice annually; that the enormous amount of work in preparing and printing these catalogs made it necessary for them to begin work on the books and to set selling prices for merchandise listed therin months in advance of the date of their release to customers; and that merchandise had to be contracted for and costs definitely known before selling prices could be set.

The following is quoted from the letter transmitting the cost formula to the Administrator:

"The formula submitted herewith had been revised in accordance with three suggestions made by the Division of Economic Research and Planning and, in this form, was accepted by that Division, by the Code Authority, and by the Legal Division.

"The Labor Advisory Board and the Consumers' Advisory Board, however, objected to the inclusion of direct materials valued at current market prices alone, and recommended that valuation of direct materials at current market prices or at cost, whichever is lower.

"The Industry, being somewhat loath to follow this recommendation and the Review Division desiring an expression of policy, this problem was taken by the Assistant Administrator for Policy to the Administrator, who ruled that the cost of direct materials should be computed on the basis of actual cost.

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"Only two objections, and these from outside the industry, as against seventy-five unqualified approvals from furniture manufacturers have been received since the Notice of Opportunity to File Objections was published on April 18, 1934. Of these two objections, one, from the National Retail Furniture Association, is merely a statement of opinion that it would be a better method, to determine cost by simply applying a fixed average percentage of all overhead to the direct labor cost. This method I understand to be contrary to N.R.A. policy.

"The other objection, from the Mail Order Association of America, is the same as that of the Labor Advisory Board and of the Consumers' Advisory Board, discussed above, the valuation of direct materials at current market price alone. As has been noted, this objection has been satisfied."(*)

The cost formula was presented for such moral effect as it might have on the industry and beyond this Code Authority did comparatively little to enforce its provisions. It was difficult, at least as to pricing provisions, to police an industry so widespread, with so great

(*) Letter dated August 10, 1934 from Asst. Deputy Niklason to the Adm. N.R.A. files.

a proportion of small units and with products so diversified as almost to defy standardization.

The following is quoted from a letter of the Temporary Secretary of the Code Authority to the Assistant Deputy:

> "In submitting this formula, we are not proposing a definite classification of individual accounts under overhead items as suggested in Plan II, for the reason that the furniture industry is not prepared to require all manufacturers to adopt uniform account Classifications. Further study will be necessary before that can be done, due to the wide variety of products and the varying methods of production in this industry. However, we think it is almost essential that immediate action be taken to place before the industry a general definition." (*)

A paragraph is quoted from a letter of the Code Authority Secretary to the Assistant Deputy:

> "Lastly, may I remind you of my impression, stated verbally, that any good cost accountant could beat any one of the cost formulas yet erected, if it were argued in court. This is particularly true of our industry, and the cost accounting and field men are definitely aware of the fact. Hence, all that we hope for from this cost formula is its moral effect, and it sometimes seems to us that this has been denied us with great resultant damage to the industry, while the Recovery Administration has continued in the hopeless pursuit of more accurate cost formulas suitable for litigation purposes, for which we do not believe they can ever be used."(**)

On the basis of this rather incomplete record, it is probable that no serious effort was ever made to enforce the code provision against selling below cost in this industry. What moral effect it may have had is uncertain. As has been indicated previously, cost consciousness of industry members may have a definite effect on prices. Furthermore it is possible that pressure was exerted to urge members to price their products on the basis of the cost system, though there is no evidence to indicate that such was in fact the case. It may be a reasonable presumption that, in an industry composed of so many units, producing such a diversity of products, such action would have very limited effectiveness, and that, consequently, cost protection as such played no important role.

C. Rubber Tire Manufacturing Industry

The code for this industry was approved on December 21, 1933. As indicated in Chapter V, one of the primary difficulties confronting the

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(*) Letter dated March 16, 1934, from L. T. Ryan Temporary Secretary of the Code Authority to Asst. Deputy C. R. Nicholson; N.R.A. files

(**) Letter dated July 21, 1934, from Walter Mitchell, Jr., Code Authority Secretary to C. R. Nicholson, Asst. Deputy; N.R.A. files.

Rubber Tire Manufacturing Industry was price unsettlement resulting from the wide fluctuations of raw material prices.

During the early code period the price of crude rubber was rising rapidly, having increased from a depression low of 3-3/4 cents per pound to 16 cents during the summer of 1934. The large manufacturers had many months' stock purchased at low prices, while small manufacturers were as a rule, buying at the market.

The Industry believed no benefit could possibly be derived from the prohibition against sales below cost, unless raw materials were to be valued at current market in determining minimum price.

Although N.R.A. had approved the current market basis in a number of industries, the Rubber Tire Manufacturing Industry was apparently too late in submitting its formula to avoid a flat rejection of this principle by the Cost Accounting Unit of the Research and Planning Division of N.R.A.

The refusal of the Tire Industry to accept this policy as applied to its cost formula, and the refusal of N.R.A. to deviate from the policy resulted in a stalemate.

A bulletin from the Code Authority requesting a vote of the industry on the revised cost formula was practically ignored, only a few decidedly negative replies being received.(*)

With neither N.R.A. nor the Industry willing to yield, the cost protection device never became operative.

D. Causes for non-application of Cost Provision

Summarizing these three cases, we find:

(1) In the Asphalt Shingle Industry cost protection was obviously unnecessary;

(2) In the Furniture Industry an indirect attack on the price problem was considered more effective;

(3) In the Rubber Tire Manufacturing Industry the failure of N.R.A. to oppose the replacement cost basis for valuing raw materials caused the Industry to lose interest. Very definitely, in this case, individual operating cost was not considered by the industry a satisfactory criterion for minimum price.

IV CODES IN WHICH COST PROTECTION FAILED COMPLETELY

In 4 of the 17 industries the attempt to prohibit sales below cost resulted in immediate and obvious failure. There four are:

(*) Industry Study.

1. Hardwood Distillation Industry

2. Canvas Goods Industry

3. Throwing Industry

4. Plumbing Fixtures Industry

The reasons for failure in each case will be reviewed briefly:

A. Hardwood Distillation Industry

The Code for the Hardwood Distillation Industry was approved on November 10, 1933, and the Cost Accounting Formula on March 21, 1934. There is little information available as to the actual operation of the provision. As far as can be determined it was never seriously invoked against any member and appears to have failed completely of its purpose.

Reasons for this failure are fairly obvious. The prices of the products of the hardwood distillation industry are to a great extent out of the hands of its members. The price of methanol and calcium acetate is determined by those industries which manufacture it synthetically, and the hardwood distillation industry must accept this price if it is to sell its product.(*) Similarly, the price of charcoal must be related to the price of softwood charcoal and to the availability of substitutes. Any attempt by the Industry to control its own price level was foredoomed to failure.

B. Canvas Goods Industry

This Industry comprises, as has been previously indicated, three disctinct groups; a few (about 14 in number) manufacturing for the national market and distributing through wholesalers; about 1,000 concerns of intermediate size producing for more restricted markets and distributing generally through retailers; and an indefinitely large number, presumably about 2,500 shops, of the family handcraft type.

At the public hearing, and in negotiations preceding approval of the Code, it shortly became evident that the interests of the wholesale and retail group were far from identical. As a result, the Code as approved included two divisions, each with a provision prohibiting sales below cost as determined by uniform cost systems, and each including price filing provisions.

The wholesale divisions never elected to utilize either of these price control devices. The retail group, on the other hand, attempted to put them into operation and secured approval of a standard cost system on May 5, 1934. It shortly became apparent, however, that it was impossible to enforce there provisions because the wholesale establishments were outside the jurisdiction of the Retail Code Authority,

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(*) Memorandum, T. C. Libin, Industrial Adviser to C. C. Williams, Deputy Adm. Oct. 6, 1933. Also, Survey of Hardwood Distillation in the United States, R. Scott McBride, Chemical & Metalorgical Engg., Oct, Nov., and Dec., 1932.

while the handcraft shops were impossible to control.

Failing in the attempt to make the cost protection provision effective, the Industry resorted to out and out price fixing agreements. These were brought to the attention of N.R.A. and a Public Hearing was held on December 14-15, 1934, to investigate the situation. As a result of the evidence introduced, the price filing and cost protection provisions were stayed on January 14, 1935.

A summary of the history of this attempt at price control is contained in the following statement:

"The so-called 'Wholesale' Group (about 14 in number) has not elected to file prices; indeed, now professes to be strongly opposed to the practice, and, further, to all provisions in the Code that savor of price control.

The so-called 'Retail' Group (estimated between 3,000 and 3,500 units) has made a desperate but absolutely futile effort to make its Open Price System work, with disastrous results. Among those results the following may be mentioned:

(a) Not exceeding 5% of this Section of the industry have suffered the prescribed Cost Accounting System to be 'wished' upon them. Perhaps less than one-third of these make an active and conscientious use of it. Nobody seriously thinks the prescribed system, or perhaps any system, can be made to 'stick' universally in the industry, or even in the case of a majority.

(b) Realizing the practical impossibility of selling the idea of the prescribed open price system based upon the prescribed cost of accounting system to members of the industry, the Retail Code Authority resorted to the use of a 'National Standard Awning Price List' (a cloth bound volume of 57 pages prepared by the National Tent and Awning Manufacturers Association Inc., and sold to members at $4.00 and others at $5.00 per copy. Authoritative word was passed around that the good and proper way to comply with the compulsory price filing provision was to invest in a copy of this elaborate piece of statistical fiction, absurdly claiming to represent 'true average costs', and notify the Code Authority that these prices, less 65% (or thereabouts) were the filer's selling prices. So far as this subterfuge for the method of price filing contemplated by the code was 'sold' to the industry, the details of the business appear to have been taken care of chiefly by the regional representatives of the code authority. In the attempt to put it over, it is admitted by the most responsible members of the industry that threats and coercion were used. (See Transcript of Record, Dec. 14 and 15, 1934, for evidence of this and other statements in this memorandum.)

(c) This resulted in barefaced, widespread price fixing. This was freely admitted at the public hearing on Dec. 14 and 15, 1934. About all that was said in defense of it was that price agreement had been "customary in the industry for 10 or 15 years, and something of the kind was regarded as essential by the dominant members of the industry.

(d) It developed at the hearing that the practice of disregarding filed prices by those who filed them was rampant throughout the industry. The charges of violations, indeed the admissions, appeared to leave few if any guiltless.

(e) The open price system, as it has worked, is an open scandal, and an open inducement to breach of law. Those who sponsor it confess they are pretty sick of it, and almost ready to junk it.

(f) As a result of the public hearing, the open price provisions of the code have been indefinitely stayed.

(g) The code is on the table for a major operation.

(h) More than half of the total number of complaints filed with the Compliance Division for violation of fair trade practices in the Textile Division are for violations of this code, and most of these are for failure to observe price provisions."(*)

C. Throwing Industry

As originally approved on October 11, 1933, the Code for the Throwing Industry included no cost provisions. However, the Code did contain machine hour limitation provisions from which plants operating under the Cotton Textile Code, throwing yarn for their own use, were in major part exempt.

The Code Administration Committee, shortly after approval of the Code, proposed an amendment providing for price filing and prohibiting sales below cost as determined by a uniform system of cost finding.

In a bulletin dated December 27, 1933, issued by the Throwsters Research Institute to its members, it was stated that "it is the belief of many that the open prices coupled with the prohibition of selling below cost will bring about a speedy correction of prices."(**)

A public Hearing was held on the proposed amendment on January 4, 1934. No objections were raised either by industry members or by the Administration.

The primary problem at which these proposals were directed presumably arose from the fact that industry members were extremely vulnerable to pressure by consumers to grant price reductions, and that the practices resorted to by consumers were alleged to be unfair. A bulletin issued by the Throwsters Research Institute (the Trade Association) under date of January 13, 1934, while approval of the proposed amendment was pending, stated:

"We have no Hope that the open price clause in our amendment will

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(*) Memo. Mercer G. Johnston to Consumers Advisory Board, Jan. 4, 1935; NRA files.

(**) C.A.C. Bulletin No. 128; Deputy Administrator's files.

fix prices but we did believe that the open price would stop the cheating and lying on the part of the customers and would allow every commission throwster to know the real price his competitor was quoting at any time."

The open price provision and the provision prohibiting sales below cost were approved on February 3, 1934.(*)

The cost estimating formula was based on a costing system which had been used by a member of the Industry for three years. This was an elaborate plan on the installation of which this member had expended $15,000. (**) This formula was approved on March 23, 1934, by Order No. 54-5, without exception.

The formula appears to have been reasonably devoid of any arbitrary features. It appears, however, to have been too complex for the requirements of the smaller units in the Industry, with the result that many of these small firms filed prices similar to those already filed by other members without attempting to figure their own costs independently under the formula.

The Code Authority, through the issuance of frequent bulletins, immediately set out to popularize the cost and open price provisions. These bulletins went considerably further, however, than merely to urge compliance, as revealed by the following quotation from the bulletin of April 3, 1934:

> "In order that those employers in industry who throw or intend to throw weaving yarns on a commission basis, may know when they approach the danger line on costs, the Code Administration Committee makes the following statement:
>
> "A thorough and painstaking investigation has been made of the costs filed with the C.A.C. and the C.A.C. now known that it is in a position to state the lowest cost to the industry on certain standards of yarn and to furthermore determine at any time the cost of throwing any yarn by an employer. This is all made possible by the use of the standard and uniform costing plan just approved by Administrator Johnson.
>
> "Realizing that there are many employers who must file their prices for commission throwing, and who have not yet installed the standard and uniform cost plan, the C.A.C. herewith shows the lowest possible cost on various standard yarns as a guide. Any employer listing or selling at prices below the basis of these standard yarns will be immediately requested to appear before the Cost Committee of the C.A.C. to substantiate his cost. Failure to substantiate

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(*) Amendment No. 1, Code for the Throwing Industry

(**) Letter from C.A.C. to H. F. Taggart, Feb. 5, 1934; files of Division of Research and Planning.

your cost figure will leave only one course open to the C.A.C. and that is to report your case at once to the Federal Trade Commission as an unfair trade practice and ask for prosecution."(*)

At first these bulletins exuded nothing but optimism. Price filing under the Code became effective April 9, 1934 and the first filings indicated a general increase in prices. This increase, on the eve of a period of low customer demand, resulted in a severe drop in the demand for throwing and efforts were put forth by some customers to break down the price control.(**)

The issuance of Office Memorandum No. 228 on June 7, and the uncertainty surrounding its application to existing code provisions, did nothing to improve morale. Shortly a note of doubt began to creep into the Code Authority's announcements:

"As general business begins to pick up our membership is getting distinctly nervous on the price situation. There have been rumors that certain throwsters are violatingthe price provisions of our code and efforts are being made to get specific data which would warrant bringing charges.

"We cannot but feel that the number of violators is distinctly small. Therefore, it would seem good business and sound ethics to maintain prices. Will anyone who can give definite information please report to the CAC so that we could trace it.

"We cannot but feel that the throwster, if there is any, who is taking work below the lowest posted cost is definitely committing suicide."(***)

Two outstanding types of evasion seem to have been practiced during this period:

(1) Many throwsters had evidently thrown large quantities of yarn prior to the approval of the costing provisions and were selling this yarn below the minimum prices.

(2) Weavers, in some cases, attempted to persuade throwsters to evade the Code by offering to sell them raw silk and rayon with the suggestion that the throwsters bill the throwing yarn to the weavers after completing the processing, instead of billing on the usual commission basis.

The experiment ended in complete failure. At a general Industry meeting held on July 14, 1934 it was voted that the Secretary take the necessary steps to have the open price provision removed from the Code.(****)

(*) Code Administration Committee Bulletin,April 3,1934,Deputy's Files,NRA.

(**) C.A.C. Bulletins Nos. 12(4/13/34, 20(5/25/34, 21(5/31/34.

(***) C.A.C. Bulletin, June 21, 1934.

(****) C.A.C. Bulletin #29, July 17, 1934.

While this resolution made no specific reference to the cost accounting system, no further attempt was made by the Code Authority to enforce price restrictions, although it did continue the issuance of Bulletins calling on the industry to refrain from price cutting practices.(*)

Many firms objected to filing open prices and computing costs according to the standard methods. When business failed to increase materially, other firms evaded the Code and took orders below filed prices. Enforcement became difficult as the Administration policies veered away from the suggestion of price fixing.(**)

D. The Plumbing Fixtures Industry

As stated in Chapter V, the primary price problem in the Plumbing Fixtures Industry resulted from the competition of mail order houses with the older channel of distribution, from the wholesaler to the plumber or retailer. Manufacturers indentified with the latter method were desperately trying to stem the inroads of the former. The original draft of the Plumbing Fixtures Code included a far reaching cost and price stabilization plan. The cost provisions prohibited any member from selling industry products (except "close outs") in the United States below the reasonable standard cost of producing and marketing such products.

Reasonable standard cost was defined to include the current market cost for raw materials and supplies, fair wages, fair allowance for overhead expense, and standard allowances for overhead expenses which were to be established by the Association's Executive Committee, effective after Presidential approval.

Pursuant to this provision a cost accounting system was to be adopted as soon as possible subject to approval by the President. The approved system was to be used by all members of the industry in allocating the enumerated items of cost to specific products.

The provision entitled Rule D-2, Minimum Prices, forbade any manufacturer to sell the products of the industry (except "close outs") below the prices established from time to time for different classes of customers and manufacturers and approved by the President, under the N.I.R.A. Such approved prices were to be the minimum below which it would be impossible for a competent and efficient producer to earn a fair profit, considering the investment, skill and risk involved in the enterprise.

Other features included in the proposal were detailed restrictions on terms of sale, a scheme for resale price maintenance, detailed customer classifications, and price filing. The apparent aim was not only to fix prices, but also to strengthen the older wholesale method of distribution as against the mail order and direct to consumer channels.

(*) C.A.C. Bulletin, August 10, 1934.

(**) Code History, page 27, In NRA files.

The Code for the Plumbing Fixtures Industry became a tug-of-war with the wholesalers-plumbers groups at one end, the mail order and "direct-to-you" groups at the other; the former attempting to maintain their position, the latter attempting to present circumscribing of their activities; with the manufacturers along the line from one extreme to the other depending on the methods of distribution they utilized.(*)

In the Code as finally approved on January 13, 1934, sales below individual cost, as determined by a standard system of cost finding, were forbidden. The usual exception was provided permitting the meeting of competition. The code also included an open price system and customer classification. Terms of sale were restricted in some detail.

Probably the most significant provisions of the Code, from the standpoint of the internal conflict of interest, was the following, aimed directly at the mail order houses:

> "No manufacturer may sell on the wholesaler purchase price level except to an individual, firm or corporation, or other person who buys and assembles at wholesale and sells plumbing supplies to retailers or to the retail division of his own business; has a proper investment in his business; maintains an adequate stock of such commodities to meet the normal plumbing supply requirements of his trade in his territory, and maintains and adequate bookkeeping system, sales office and delivery service."(**)

Restrictions against the usual form of mail order contract was contained in a provision forbidding the sale of materials for stock, under any form of guarantee to a purchaser against advance or decline in price, and in a provision specifying that only orders for stock for shipment within 30 days of receipt of order, and orders for specific jobs, could be accepted at prices in effect at receipt of order, all orders to be subject to prices in effect at date of shipment (a ban on option contracts and long time price guarantees).

Although the Code as approved seemed to represent in general a victory for the group opposed to the mail order and "direct-to-you" scheme of distribution, the effect of this advantage was in great part mitigated by a stay of the provision requiring the establishment of differential discounts for a period of 60 days. As a result, an amendment to the Code was drafted by the Code Authority which modified and redrafted the customer classification provisions. Under this amendment mail order and "direct-to-you" purchasers obtained the right to be classified as wholesalers. This amendment was approved on January 31, 1934. (***)

(*) See statements of Asst. Deputy Admr. D. G. Pilkington, in Code History, pp. 16-17-35-37-76-77.

(**) Plumbing Fixtures Code, Art. VIII, Section 7.

(***)Amendment No. 1, Code; Vol V, Codes of Fair Competition, pp.699-700.

Some time after the approval of the amendment a 30 per cent differential (determined by Ernst & Ernst, Auditors and Cost Accountants) was proposed as the minimum percentage allowable between the wholesale and other price levels, and submitted to N.R.A. for approval. While favored by the Assistant Deputy Administrator in charge, the proposal met with opposition within the Administration, on the ground that it was based on inadequate evidence, and it was not approved. The most important objector outside of the N.R.A. was the Mail Order Association of America.(*)

Manual of Uniform Cost Principles for the Plumbing Fixtures Industry (prepared by Ernst & Ernst at a cost of $10,000) was approved by the Administrator on September 13, 1934, to become effective September 29, 1934.(**)

In the cost formula as approved, materials were to be valued at actual or current replacement cost, whichever was lower.

Burden was to be calculated on a basis of 66-2/3 per cent utilization of operating capacity, with an exception permitting the use of higher percentages by individual members who could justify such request.

The cost protection provisions of the Code never became operative. The major difficulty was occasioned by the refusal or failure of members to file with the Code Authority their contracts with mail order houses. In his report (No. 9), dated July 18, 1934, (***) the then Administration Member of the Code Authority stated that the President of one concern (unnamed) having such a contract advised the Authority to the effect that the filing of mail order contracts would wreck the price structure of the industry. Also it was inferred that at least some contracts of that nature contained clauses invalidating them upon disclosure of their terms to a third party. Certainly, probably pressure of mail order houses on their suppliers in the industry should be taken into condiseration.

If it is true that one such supplier is controlled financially by a large mail order house, as was stated, the failure of that concern to file its contract probably went beyond any mere pressure. Six complaints were filed against members having mail order contracts; two were recommended for litigation. One case, involving the company mentioned above, was argued before a Federal District Judge in Wisconsin; no decision was rendered.(****)

(*) Code History, pp. 20-23; Vol. B, Part III, Code Record Sec.; letter dated Aug. 28, 1933, from E. J. Condon to N.R.A.

(**) Administrative Order No. 204-14.

(***)Deputy Administrator's files, Folder No. 11, letter from Administration Member Clay to Div. 2, N.R.A.

(****)Litigation Division files, Docket L-6-2: Rundle Manufacturing Co., Milwaukee, Wisc.

As a result of this opposition by mail order houses and manufacturers whose interests were identified with them, the prohibition against selling below cost never became operative.

The Code Authority, with no mention of the underlying causes, stated that the lack of compliance and enforcement and the failure to obtain any action in cases where complaints had been filed since April, 1934, had resulted in complete industry demoralization, costing the industry upwards of $200,000 a week.(*)

At the same time a letter was addressed to the Chairman of the several associations in the industry divisions, stating in part:

> "Prices are the lowest in the history of the industry, considering the cost of manufacture, and the market is in a chaotic condition with the result that two-thirds of the Sanitary Cast Iron Enameled Ware Manufacturers, over one-half of the Vitreous China Plumbing Fixtures Manufacturers, and a large number of those in other industries (divisions) subject to the code are temporarily or permanently out of operation."(**)

This condition prevailed after approximately one year of the Code.

As a consequence, the various divisions of the Industry requested the deletion on the trade practice provisions. This was done by an amendment to the Code, effective April 15, 1935.(***)

Probably the best commentary on the results of attempted price control in the Plumbing Fixtures Industry is furnished by the attached chart showing the steady decline of plumbing fixture prices from 1926 through 1935. Any temporary rise under the Code during the early part of 1934 was soon lost, and prices dropped far below their earlier depression lows.

E. Causes of Failure

Reviewing these 4 cases, the following causes of failure are apparent:

(1) In the Hardwood Distillation Industry, prices are out of the hands of the Industry, and are determined by the availability of substitutes;

(2) In the Canvas Goods Industry, there were three distinct competing groups. No one of these could successfully control its price

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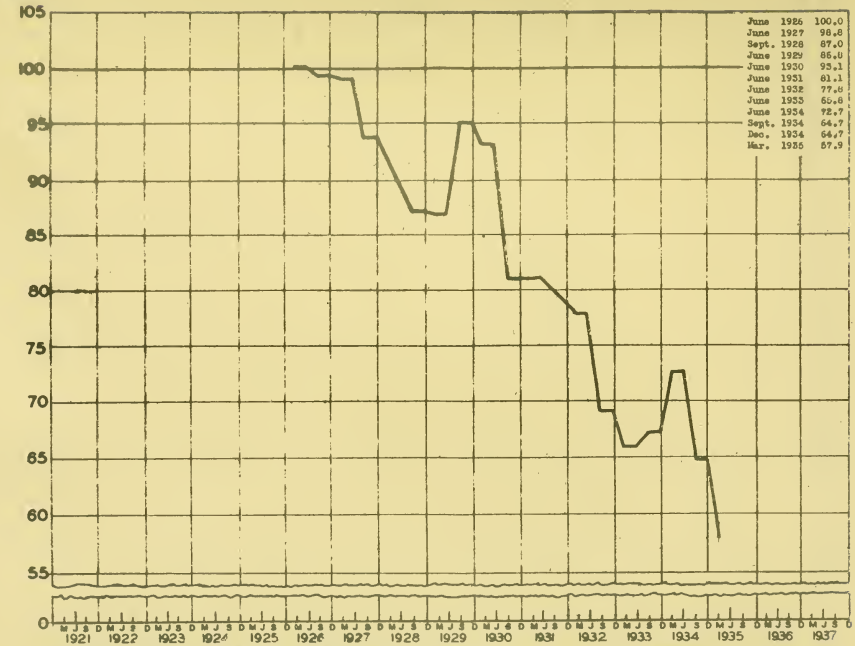
(*) Minutes of Code Authority meeting, Jan. 15, 1935; Deputy Administrator's files, folder No. 2.

(**) Deputy Administrator's files, folder No. 2: letter dated Feb. 11, 1935, from R. K. Hanson, Secty. of Code Authority, to members of Code Authority

(***) Amendment No. 3, Plumbing Fixtures Code.

INDEX OF RETAIL PLUMBING FIXTURES PRICES,- MAR.1926-MAR.1935*



*BASED UPON INDIVIDUAL SERIES FROM SEARS, ROEBUCK & CO. AND MONTGOMERY WARD CO. FOR BUILT-IN-TUB (5½ FT.), SINK (42", ROLLED RIM), AND CLOSET OUTFIT (28½" HIGH), L.C.L. DELIVERED

RESEARCH AND PLANNING
NRA

level without cooperation from the other two;

(3) In the Throwing Industry, the resentment of consumers apparently resulted in a buyers' strike with which the Industry was not equipped to cope;

(4) In the Plumbing Fixtures Industry the aim of the provisions of the Code was to restrict the activity of the mail order houses, and these refused to cooperate in the effort.

V. CODES IN WHICH COST PROTECTION WAS EFFECTIVE TO A GREATER OR LESSER DEGREE

In ten of the codes studied provisions against selling below cost were effective to a greater or lesser degree, and for a longer or shorter period, as instruments for limiting price competition. This implies no judgment as to their success in coping with the problems at which they were directed, nor their smoothness of operation as administrative instruments, nor the degree to which general compliance was secured, in which respects their record various widely. It does mean that, in each of these cases, cost protection, for an appreciable period, exercised a definite effect on the behavior of people in the market. These codes are:

(1) Limeston Industry
(2) Malleable Iron Industry
(3) Screw Machine Products Industry
(4) Fertilizer Industry
(5) Fire Extinguishing Appliances Manufacturing Industry
(6) Paint, Varnish and Lacquer Industry
(7) Graphic Arts Industry - Commercial Relief Printing Division
(8) Coffee Industry
(9) Luggage and Fancy Leather Goods Industry
(10) Paper Distributing Trade.

A. Limstone Industry

The code for this industry, as presented at the public hearing on September 19, 1933, prohibited the sale of products below their reasonable cost plus 10 per cent.

Price filing provisions were proposed for sellers of rough stone, (quarriers), and bid filing for the sale of fabricated stone.

There was some question at first as to whether independent cut stone fabricators should properly be included under the code, thus making it vertical in nature. On the recommendation of the Deputy Administrator in charge, it was decided that a vertical code including both the quarrying and fabricating processes was desirable.

As a result of post hearing conferences the code as approved on November 14, 1933, contained the following provisions:

1. Prohibition against selling below "allowable reasonable cost." A formula for arriving at this figure was to be developed by the Code Authority, subject to the approval of the Administrator.

2. Price filing provisions for rough stone.

3. Grant of power to the Code Authority to establish rules, methods and practices for filing bids for fabricated stone, subject to administrative approval.

Other than the obvious aim of raising prices, these provisions were designed to eliminate the practice of bid peddling and also reflected the desire of independent cut-stone contractors to eliminate the cost advantage of the integrated operators.

The Code Authority, upon approval of the code, submitted two cost formulae. The quarrying formula was developed by a number of concerns from studies extending over an eight year period. This formula established cost lists for classifications of block and sawed limestone. These lists specified minimum prices per cubic foot for the sale of rough stone.

The fabrication formula was developed by Scovell, Wellington and Company, Certified Public Accountants. It was based on studies of cost figures of thirteen Indiana district operators representing over 50 per cent of total industry production. For purposes of comparison, N.R.A. obtained figures from four additional concerns, one in Alabama and three in Texas.

The fabrication formula listed (1) certain items of operation (jointing, sawing, etc.) to be charged at specified amounts per cubic foot, (2) other items of operation (Turning, planing, cutting, etc.) to be charged at specified amounts per hours, (3) selling and administration at 10 per cent of the sum of the first two items. (4) cost of material as established by the quarrying formula, plus inbound freight, (5) a 10 per cent allowance for waste on rough and scabbled block - 5 per cent on sawed stone, and (6) outbound freight commuted at 150 pounds per cubic foot.

Costs were based on 90 per cent operation. During 1933-34 the industry operated at less than 20 per cent of capacity. (*)

Provision was made that any member could petition the Administration for permission to use his individual costs if lower than those in the formula, such petition to be accompanied by adequate cost data. If petitioner's request was approved, other members could sell down to such approved individual costs to meet competition. The quarrying formula provided that petitioner's cost must be lower than those established by the formula when computed on a 20 per cent production basis (one shift), as against the 90 per cent used in the cost determination, and at wage rates prevailing in such petitioner's geographic location.

Upon recommendation of the Industrial Advisory Board and the Research and Planning Division, and despite the disapproval of the Consumers Advisory Board, the Labor Advisory Board and the Legal Division, the cost formula was approved on May 12, 1934, without material change, for a trial period of 90 days.(**)

(*) Approved cost formula for the Limestone Industry. In cost Accounting file; NRA.

(**) Administrative Order No. 113-8, May 12, 1934; NRA files.

The formula was repeatedly extended until it finally lapsed on May 27, 1935. Various members opposed further extension of the formula from time to time but the majority of the industry continuously urged its extension.

The Indiana Limestone Corporation, the largest unit in the industry, originally an enthusiastic proponent of the formula, consistently urged its extension until May, 1935, when it reversed its position and protested any further attempt at price stabilization. The corporation's spokesman voiced his conviction that the formula was a fine document but unworkable. He contended that it was impossible to meet N.R.A. requirements as to evidence of violation with the result that the formula could not be enforced.(*)

The Bid Filing System, Working Rules and Bid Checking Systems formed an integral part of the administration of the cost provisions and formula.

Pursuant to the code, the Administrator approved a Bid Filing System on June 6, 1934. This provided that members should file with the Code Authority or such agencies as it designated, copies of their bids, together with such other information pertaining thereto as might be required by the Code Authority, in such form and under such circumstances as the Code Authority prescribed. Such filed bids were not to be opened by the Code Authority prior to the time when they were no longer acceptable, or prior to the opening of bids by owners.(**)

On the basis of this very broad delegations of authority, the Code Authority prescribed working rules governing the filing of bids. These rules, insofar as they pertained to bid filing, were an elaboration of the general language in the approved Bid Filing System and set up time limitations on filing of bids, etc. The Working Rules went beyond even the broad language of the System and specified a uniform Proposal Contract form for the making of bids. A separate set of such Rules was established for the New York Metropolitan area and contained the requirement that all bids in that area must include "setting of stone."

The Code Authority sought to enforce the cost provisions through the adoption of a Bid Checking System for the industry. A master bid based on the Cost Formula, was prepared for a given project by an estimator employed by the Code Authority for the purpose. All individual bids lower than the master bid were considered non-compliant. There is evidence that architects, and general contractors informed of bids considered non-compliant.(***

The Deputy Administrator questioned certain of the Working Rules and the uniform proposal contract forms. As a result, the Rules were revised in the early part of 1935 for submission to N.R.A. and an amendment proposed

(*) Transcript of Hearing, May 20, 1935; NRA files.

(**) Administrative Order No. 113-11, June 6, 1934; NRA files.

(***) Orally from Mr. Robert Wynn, Atty. to the Code Authority.

to authorize rules for bid making. Neither was approved. (*)

Two petitions were submitted for exemption from the allowable cost provision; one was granted, the other denied, with the Code Authority recommending denial in both cases.(**)

A number of complaints (not large considering the size of the industry) were made relative to the Code Authority's determiniation that bids were non-compliant and relative to the working rules.

The indication is that in the early period of administration of the Cost Formula and Bid Filing System, compliance generally was good, industry members withdrawing bids when advised that they were non-compliant. There is indication of a breakdown of compliance later (1935). (***)

The Compliance Division, in a report covering the period October, 1934, to May 27, 1935, lists four complaints relative to failure to file bids, two relative to failure to file prices and two complaints relative to extending special privileges, but none based on violation of the cost provision.

It is important to note that no two identical bids were submitted during the existence of the Cost Formula.

In recommending extension of the Cost Formula in October, 1934, the Deputy Administrator stated that no protests had been received pursuant to a notice of opportunity to be heard. In December-January, 1934-35, a majority of those registering opinions favored extension.

27 concerns protested the extension of the Cost Formula beyond April, 1935. The Deputy Administrator recommended extension on the ground that failure to continue the Formula would result in undue hardship on the industry. (****)

Bureau of Mines data reveal a substantial drop in prices between 1933 and 1934. Sales in 1934, however, may have been made on the basis of contracts executed during 1933 and earlier.

A vice president of the Indiana Limestone Company stated at the public hearing held May 20, 1935, that his company had lost money every month for years. It was stated that most of the industry was operating at a loss. (*****)

(*) Minutes of Meeting, Code Authority, Dec. 19, 1934, Jan. 25, 1935, March 28-29, 1935. NRA files

(**) Administrative Orders Nos. 113-15 and 113-16; NRA files.

(***) Minutes of Meeting, Code Authority, March 28-29, 1935; NRA files

(****) Deputy Administrator's files, NRA.

(*****) Transcript of Hearing, May 20, 1935; NRA files.

Executive Order No. 6646, May 14, 1934, proved an effective device for enforcement of compliance with code pricing provisions, in view of the unusual proportion of public building contracts, many of which entailed some expenditures of Government funds under this Order bidders not complying with N.R.A. codes were ineligible to quote on work involving the expenditure of Federal funds.

The information contained in N.R.A. files was supplemented by a field survey conducted during the latter part of December, 1935. This was confined to the New York Metropolitan area. The following information was obtained as the result of interviews with two cut-stone contractors in that district:

1. The code apparently had no effect on the nominal price of rough stone, which had remained constant for the last ten years. Secret concessions modifying this nominal price were, however, less prevalent during the code period.

2. The cost provisions of the code relating to fabricated stone were ineffective in the New York area because minimum prices had been computed on the basis of Indiana wage rates.

3. Indiana fabricators do not appear to have entered the New York area until recently. With the increased amount of federal construction work, which must necessarily be awarded to the lowest bidder, contractors have sought bids from Indiana fabricators who have the advantage of a wage rate, prevailing in their area, equivalent to approximately 60 per cent of the New York rate. Heretofore, local subcontractors have apparently been successful in preventing Indiana fabricators from securing New York jobs but the inflexible rules concerning federal construction awards have recently resulted in this competition from Indiana firms.

4. The code somewhat restricted bid shopping by general contractors, and the use of the kick-back by irresponsible limestone sub-contractors. Since the code lapsed, these practices have again become very prevalent.

In an interview Mr. Robert Wynn, counsel to the Code Authority, said that, at least during the earlier period of administration, the cost provisions coupled with the price and bid filing schemes were distinctly successful in stabilizing prices, eliminating secret concessions and preventing bid paddling.

B. Malleable Iron Industry

The code for this industry was approved on November 27, 1933. Application for the code was made by the Malleable Founders Society, organized on July 31, 1933, for this express purpose, and to provide for the administration of the code after approval. Representation was claimed by the Society as 81.9 per cent of the total number of concerns in the industry and 86.9 per cent of the total volume in 1932. (*) It was alleged that the Society and its Board of Directors had as members several who were among the 48 indicted and fined by the Government in 1926 for price-fixing in violation of the Sherman Act. (**)

As presented at the Public Hearing on October 2, 1933, the provision read as follows:

> "Subject to the approval of the Administrator, the Board of Directors shall prescribe a cost accounting system which conforms to the principles of and is at least as detailed and complete as the uniform and standard method of cost finding set forth in the Manual of Accounting issued by the Society, with such modifications therein as may be promulgated from time to time by the Board. The Board of Directors shall in accordance with such cost-accounting system and with the approval of the Administrator determine periodically fair and reasonable costs of production in the industry for different types of malleable iron castings.
>
> "Each member of the industry shall install and use such cost accounting system as prescribed and, subject to the approval of the Administrator, shall be furnished by the Board of Directors with the periodical tabulation of costs and cost differentials arrived at in accordance with such cost-accounting procedure. An number of the industry who shall fail to install and use the cost accounting system so prescribed or who shall sell malleable iron castings below the fair and reasonable costs of production as shown by the aforesaid tabulation shall be guilty of a violation of the code."

The Society claimed that competitive conditions in the industry during the several years immediately preceding had been particularly destructive, that even preceding the depression substantial tonnages were sold at less than cost of production. (***) It was stated that General

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(*) Transcript of Hearing, October 2, 1933, and application for code, August 16, 1933.

(**) Letter dated October 18, 1934 from Moline Iron Works, Moline, Illinois, to Donal Richberg - N.R.A. files, folder 9-A.

(***) Letter, Sept. 2, 1933 from R. E. Belt, Secretary to H. O. King, Deputy Administrator, NRA general files.

Motors had built the largest malleable plant in the world and that various plants had been shut down or were in receivership as a result of that one development. For many years the Ford Motor Company and other powerful buyers have held similar threats over the industry. (*)

Opposition to the proposal was expressed by several industry members on the ground that the provisions were indefinite, that the Board could not possible arrive at "fair and reasonable costs" due to intricacies of production and that costs would therefore be average and arbitrary. It was argued that consumers would be penalized and some large users encouraged to build their own plants, entailing a permanent loss of certain markets. It was further contended that competition would be destroyed by the establish ment of minimum prices and that the provisions would actually constitute a price fixing agreement. Individual cost was advocated in place of average cost. (**)

The Consumers Advisory Board contended that the provision would result in the establishment of uniform prices, elimination of incentive to reduce costs and loss of benefits of reasonable and legitimate competition. The Research and Planning Division stressed the importance of full consideration being given to the contentions of industry opponents to the proposal.

The Consumers Advisory Board recommended revision of the proposal to provide for the use of individual cost. This was seconded by the Research and Planning Division. This Division further suggested inclusion of a provision in the code to allow an individual to offer goods for sale below his own costs in order to meet prices of a competitor. (***)

Despite these objections the provision as presented at the Public Hearing was written into the approved code, without change.(****)

Deputy Administrator H. O. King, in recommending approval, stated:

"I am satisfied, however, that the necessity for approval by the Administrator is adequate protection against such restrictions."(*****)

(*) Letter, Lake City Malleable Co., to Administrator, dated March 3, 1934. NRA general files.

(**) Transcript of Public Hearing, Oct. 2, 1933, pp. 94-104.
Letters Vol. A, p. 164 - Code Record
Letters Vol. B, pp. 1, 146 - Code Record, NRA files.

(***) Vol. 2 - Memo. Consumers Advisory Board to H. O. King, Deputy, Nov. 3, 1933.
Vol. 2 - Research and Planning Report, p. 31, NRA files

(****) Approved Code, p. 400, Article V., Selling Below Cost.

(*****) Deputy's letter to the Administrator, Vol. II of the Code.

On January 17, 1934, the Code Authority submitted to NRA a shedule of fair and reasonable costs for certain products and a copy of the cost accounting procedure proposed by the Code Authority. (*) On March 3, 1934, a public hearing was held on the proposed cost accounting system and procedure, and on April 25, 1934, an Administrative Order was issued prohibiting a member from selling a casting below fair and reasonable cost as determined, at the member's option, by (1) competitor's filed quotation as obtained from the Secretary, (2) cost of such casting as determined by the tabulation of fair and reasonable cost list and discounts therefrom, as issued by the Board of Directors, and (3) cost to the member of such casting, or of a casting of similar wieght and design, as determined by the principles of the approved cost accounting system; provided the member file with the Secretary any quotation on a casting that was less than the cost as determined under the second option, five days before the effective date of such quotation. Such filed quotation was to be in effect not more than 105 days and could be withdrawn by the member at any time (**) In view of NRA policy and other objections, the 5 day waiting period was subsequently deleted.

Subsequently this approval was extended on four occasions, as follows:

Administrative Order No. 132-13, July 31, 1934, 90 days
Administrative Order No. 132-19, Nov. 12, 1934, 60 days
Administrative Order No. 132-21, Jan. 11, 1935, 60 days
Administrative Order No. 132-24, Mar. 13, 1935, indefinitely.

The effect of these Administrative Orders was a radical change in the provision of Article V of the code which prohibited every industry member from selling below the "fair and reasonable costs" determined by the Code Authority.

In commenting on this change, the Assistant Deputy Administrator stated:

> "When the costing system and schedule were submitted to the Administration for approval, the industry was made to include in the costing system and schedule a procedure which, in effect, nullified some of the objectionable features of Article V. The procedure permits a member of industry to sell below the schedule either to meet prices of a competitor or to sell at prices based on his own cost, provided he file with the Code Authority the quotation, and the customer's name and pattern number with respect to such sale." (***)

(*) Letter, Jan. 17, 1934, from Robt. E. Belt, Secretary to National Recovery Administration. NRA General Files.

(**) Administrative Order No. 132-7, April 25, 1934. NRA files.

(***) J. R. L. Santos, Asst. Deputy, in recommending extension, Administrative Order No. 132-19.

The Assistant Deputy Administrator also stated:

> "Certain members of the industry have objected to the undesirable feature of making public a purchaser's name and the amount which he is paying for his purchase, In addition to this, the trouble involved in estimating and filing has tended to make the majority of orders in the industry based not on the individual member's cost but on the schedule of fair and reasonable costs formulated by the Code Authority." (*)

The Secretary of the Code Authority stated that at sectional meetings, at which more than 85 per cent of the industry in number and more than 90 per cent in volume of business were represented, action had been unanimous on the cost accounting procedure, the cost accounting system and on the schedule of fair and reasonable costs. (**)

The schedule of fair and reasonable costs presented was based on weight classification. The analysis of types of castings were based on approximately fifteen years experience and was accepted by a preponderance of the industry as sound and practical. The actual costs submitted were compiled from cost data covering more than 6,000 individual items accumulated over the last four years. The costs were submitted by approximately 30 companies geographically distributed in different malleable producing districts and representative of producers of different sizes and types of operation. These concerns were selected on account of their greater efficiency throughout the industry as a whole and their maintenance of cost accounting systems conforming substantially to those prescribed by the Directors. Costs submitted were adjusted to conform with labor rates and material prices then prevailing, with overhead adjusted in accordance with the approved cost accounting system. (***)

The Consumers Advisory Board was of the opinion that sufficient data were not available for N.R.A. to use as a basis for approval of the schedule of fair and reasonable costs; the Research and Planning Division took the same view but later recommended approval of the revised cost proposals. The Consumers Advisory Board further contended that "selling and administrative expense" was not properly a part of cost and suggested that material

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(*) J.R.L. Santos, Asst. Deputy, in recommending extension, Administrative Order No. 132-19.

(**) Transcript of Hearing, March 3, 1934, p. 54.

(***) Transcript of Hearing, March 3, 1934, p. 47 (Statement by Code Authority Secretary).

be charged at cost or market, whichever was lower. The Industrial Advisory Board recommended unqualified approval. (*)

No major changes were made in the formula or in the schedule of fair and reasonable costs. In fact, although they were approved on five different occasions for short periods of time to allow for possible changes, and although the code provided for periodical determinations by the Code Authority, no changes were ever made in either the systems, procedure, or schedule of fair and reasonable costs.

Some consumer complaints were received claiming that the system was utilized by certain members of the industry to obtain unreasonably high prices. (**)

The Moline Iron Works complained that the code was formulated and administered by the same group which had had difficulties with the Federal Trade Commission in 1926 and that the system and schedules constituted price fixing. (***)

The Evansville Malleable Castings Company complained that the Code Authority required too much information with reference to quotations below the schedules. This company referred to the necessity of disclosing customers names and addresses. (****)

In March, 1935, the Administration Member reported on a meeting of the Code Authority as follows:

> "The Secretary advised that 76 out of a total of 96 have installed the cost system or have made satisfactory changes in their cost systems. Only 12 members have failed to make any attempt to install the system or make proper changes in their own systems. A few members are now working on their systems with an effort to fall in line." (*****)

(*) Memo. W. C. Beatty and M. S. Massel of Consumers Advisory Board to O. W. Mason, Asst. Deputy, Feb. 16, 1934.
Memo. E. F. Taggert, Research and Planning Division, to H. M. Halstead, Asst. Deputy, Jan. 30, 1934.
Memo. H. F. Taggart of Research and Planning Division to H. O. King, Deputy, Feb. 19, 1934.
Memo. Carroll Burton, Industrial Advisory Board, March 3, 1934.

(**) Letter from R. E. Belt, Code Authority Secretary, to members of the Society, dated June 16, 1934.
Letter from Asst. Deputy to the Society, June 25, 1934.

(***) Letter - Moline Iron Works, Moline, Ill. to Gen. Hugh S. Johnson, dated Aug. 22, 1934. NRA General Files.

(****) Letter - Evansville Malleable Castings Co. to Asst. Deputy, Dec. 10, 1934.

(*****) Letter from Administration Member to Deputy, March 12, 1935. (Folder 1, p. 2; NRA files)

The Code Authority reported to the N.R.A. that from December 7, 1933, to April 13, 1935, a total of about 155 complaints were registered and that the most frequent complaint was failure to file quotations made below the schedule of fair and reasonable costs. (*)

In reply to a letter from the Counsel for the Code Authority requesting an extension of the cost accounting system, schedule of fair and reasonable costs and the procedure for applying the same, the Assistant Deputy Administrator stated in part:

> "In addition to this, the Code Authority has not to my knowledge complied with the procedure contained in the cost system by issuing revised applicable discounts from the table of fair and reasonable costs at least quarterly. To be perfectly frank with you, it is my personal opinion that the tabulation of fair and reasonable costs in itself is nothing more nor less than an objectionable price fixing feature in the Malleable Iron Industry. I further believe that it is a bad principle to require any member of the industry to file the name of his customers which is necessary when you sell below the tabulation of fair and reasonable costs." (**)

The opinion of the Code Authority (as expressed by its counsel) of the efficacy of the system is quoted:

> "Its adoption has promoted a more intelligent and scientific basis for the marketing of the products of the industry; has avoided the tendency toward more undesirable and questionable marketing activities; has not prevented in any degree the production and sale on the basis of individual efficiency and low costs, but has rather tended towards a lowering of the customer's market as compared to prices prevailing at the time of the adopting of the plan. It is undoubtedly subject to further improvement and modification, but it is believed that is based on extensive experience and study, and is a benefit to all phases of the industry, including labor, consumers, and employees." (***)

C. Screw Machine Products Manufacturing Industry

The supplementary code for this industry, as originally presented on February 8, 1934, prohibited selling below cost with certain exceptions which did not include permission to meet competition. In response to suggestions by N.R.A. that such an exception be provided, the industry

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(*) Code Authority Report (Folder 24 a - Drawer 10-3).

(**) Letter from J. R. L. Santos, Asst. Deputy to Arthur Fisher, Counsel of the Code Authority, October 5, 1934. NRA files.

(***) Letter from Arthur Fisher, Counsel of Code Authority, to Administrative Officer, W. A. Harriman, January 5, 1935.

contended that this would be impractical since 99 per cent of all production was on a special order basis. The industry further contended that the inclusion of such a provision would encourage bid peddling and a primary object of the code sponsors was to prevent this practice.

Included with the code, and forming an integral part of it, was a cost formula. In this formula material was to be valued at current market in accordance with quotations in the "American Metal Market," with stipulated allowance for waste. Labor and overhead charges were to be computed on the basis of various factors and indexes more or less arbitrary in nature.

This formula was accorded careful consideration by Dr. H. F. Taggert of the Cost Accounting Unit, Research and Planning Division. In summarizing the results of a five hour conference with the industry he said in part:

> "Especial pains were taken to discover whether the numerous arbitrary percentages and amounts were in fact reasonable. * * * In every case the percentages used or the amounts specified were those which would produce a minimum cost. No elements of cost were included in making up the formula which were undesirable from our standpoint and the bases on which the various elements were included were such as have been specified in other industries. My conclusions were that the formula was not likely to produce results which could be in any sense considered price fixing."(*)

Despite objections by the Consumers Advisory Board on the grounds that the cost formula was arbitrary in nature, the code, including the formula, was approved on April 28, 1934.

The Code Authority apparently took careful steps both to disseminate information with reference to the cost system and to check on any alleged violations.

Only one complaint was ever received with reference to the operation of the cost formula and this was from a member whose method of operation was almost unique in that he still used low speed machines for his work. In this case, due to the special circumstances involved, some form of exception was under consideration at the time of the Schechter decision.

Unfortunately, no price series is available which would permit an objective guage of the effect of the formula on price. However, the following quotation from a Code Authority bulletin issued on January 23, 1935, appears to be pertinent:

(*) Files of Division of Research and Planning, Cost Accounting Section; Memo., March 17, 1934, from H. F. Taggert to L. S. Horner.

"Historically we should state that the code was approved on April 28, but that the Minimum Cost Estimating Formula was not effective until June 27. This interim period was hopeless as far as enforcement of wage and hour and other provisions in the code were concerned, because many contended, and rightly so, that they could not pay more for labor, more for material and still get the same price for the product. They were already reduced to the necessity of operating at a loss and, with costs increasing from day to day, ruin lay ahead for the majority."

* * * * * *

"The entire industry is convinced that a formula is essential to its welfare. The present schedule may not be 100% correct but it is workable. Its main weakness is that in most instances it is at least 10% too low." (*)

Several months after approval of the formula a survey of prices quoted by different companies for various sets of specifications revealed that generally prices were above the minima allowed by the formula, and that there were no cases of uniformity, although the spread between bids was considerably smaller than had previously been the rule. (**)

The following appraisal of the effect of the price provisions of the code by Mr. Ray Stevens, the Deputy Administrator, is included in the code history:

"GENERAL DISCUSSION: The code, having been signed on April 29, 1934, had been in operation slightly over one full year and had a record of achievement which was notable in comparison with the rest of the manufacturing codes having unlike most, a complete and detailed method of costing written into the code, which provision was well enforced so far as enforcement lay in the power of the Code Authority and the result being that the industry has probably gained more benefit through the standardization of costing methods than most other manufacturing industries.

"PRICE PROVISIONS: The most notable provision of this code was known as Schedule A and provided a complete costing method for the members of the Industry. This provision represents one of of the few costing systems approved under the NRA and while it was felt by some to have undesirable features which tended toward the fixing of prices, it was undoubtedly of great benefit

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(*) Bulletin, Supplementary Code Authority for the Screw Machine Products Industry, Jan. 23, 1935.

(**) N.R.A. files, Deputy's files, complaint #8.

to the industry as a whole, especially to some of the smaller members who have never developed a costing system and who prior to this time, had had only a vague idea of what their costs of manufacturing were. I consider this provision is very valuable one and believe that in any future codification it should be kept." (*)

On a field trip conducted between December 16 and 20, 1935, the following individuals who had been connected with the Administration of the Code were interviewed:

Mr. George Briggs, Chairman of the Screw Machine Products Code Authority

Mr. Luke B. Lockwood, Counsel for the Code Authority

Mr. George Byrne, Secretary for the Code Authority

A summary of the opinions expressed at these interviews follows:

"Perhaps the greatest reason for the at least partial success of the price control device undoubtedly rested with the executive ability and leadership of the Code Authority. Because these leaders of the industry gained the confidence of the entire industry, both through their own actions and the actions of their field representatives, and because they substituted education for bureaucracy and arbitrary enforcement, all members of the industry, large and small, felt that a sincere endeavor was being made to assist them."

(*) Code History, Screw Machine Products Code, Exhibit H.

D. Paint, Varnish and Lacquer Manufacturing Industry

The proposal, as originally presented, consisted of three distinct parts.

The first part (relating only to trade sales) required specific differentials in prices based upon the size of the containers in which the products were packed. Under this privision products were divided into three groups. In groups 1 and 2, the gallon can was declared to be the "basic" package; in group 3, the half-pint can was basic. Each manufacturer would have determined his own price for these basic packages, but would have been required to make specified additions to the price for smaller packages, and specified deductions from the price for larger packages.

The second part related only to lacquer thinners in full tank cars or tank wagon lots of not less than 1000 gallons, and simply provided that such product should not be sold at less than cost. Cost, in this instance, was not defined.

The third part provided that products of the industry should not be sold at less than cost, which, in this instance, was defined as the sum of:

1. Market replacement cost of raw materials, to be furnished monthly by the Code Authority.

2. Containers and packages.

3. Cost of processing, defined as including 14 general classes of expense.

4. Administration and overhead of at least 10% of the total of items 1, 2 and 3.

5. Transportation charges on goods sold on delivered basis.

As to the fundamentals, the industry was unanimously behind the proposal. The only objections were that some of the differentials in the first part were too high. The only reasons offered were a drop of $200,000,000.00 in annual volume from 1929 to 1931 and a statement that sales below cost were becoming common in industrial sales, and were spreading in trade sales. It is probably a reasonable inference that producers who maintained prices on trade sales were willing to bid for industrial volume at a substantial price concession in order to decrease unit overhead burden.

The decline in volume was ascribed to the slump in construction. No mention was made of other obvious factors, such as curtailed production of automobiles, furniture, and railroad rolling stock. No record of insolvencies was presented. (*)

(*) Volume A, Lumber & Timber Products Industry files, NRA.

The proposal, as finally revised, had the unqualified approval of the Industrial Advisory Board, the Consumers' Advisory Board and the Deputy Administrator. It had neither approval nor disapproval of the Division of Research and Planning. The Legal Division claimed that the provision was too vague, was phrased, and provided inadequate supervision.(*)

The Code was approved on October 27, 1933. As finally revised, the provision respecting price differentials was deleted, and the provision respecting cost of processing was re-phrased to eliminate the specific items named in the proposal, the language being:

"all direct costs, * * * depreciation * * * plus a proper proportion of all indirect factory expenses *.* * on the basis of the average rate of utilization of plant facilities of profit making producers during the years 1928-1933 inclusive."

The provisions regarding administration and overhead was re-phrased to provide for inclusion of a proportion of these expenses, to be determined by the Code Authority, subject to approval of the Administrator.

Thereafter, by amendment to the Code, the provision regarding processing costs was re-written to provide that the Code Authority should classify the product of the industry and establish and furnish figures representing all direct and indirect factory costs and expenses. Such figures were to be the "lowest reasonable cost" and, after approval by the Administrator were to be used by all members of the industry as minimum processing costs.

At no time during the life of the Code were all sections of the article effective simultaneously. A "proportion of the general and administrative expenses" was informally approved only for the period from November 11, 1933 to December 15, 1933, the figure being 10% of all other costs. Schedules of processing costs were first approved on May 11, 1934 and were effective only from May 26, 1934 to January 25, 1935.

No cost accounting formula was contemplated. The Code itself provided for the determination of figures representing approximately 70% of total costs.

Under the amended provision, the Code Authority, subject to approval of the Administration, determined and published these figures in two general classes, raw material costs and processing costs. The Code Authority had similar power to publish a figure representing administrative and general expenses, which power was not exercised officially after the Code was amended. Transportation charges were required to be added, when goods sold f.o.b. destination, and cost of containers and packages were required to be added in all cases.

(*) Code, Article XIII, Amendment No. I, Volumes I and II

Raw material costs were determined simply by reference to quotations published in the Oil, Paint and Drug Reporter. These quotations were reprinted monthly by the Code Authority and distributed to all members of the Industry. The Code Authority was advised that the power of Administrator to approve these costs would be exercised by a disapproval, if, upon complaint, the Administrator found any figures to be improper.(*) No complaint as to any of these figures was ever made. (**)

Figures on processing costs were split into three items:

(1) Cost of processing to the point of producing the finished product in bulk;

(2) Cost of packaging the bulk product;

(3) Losses of material before and during processing (evaporation, spillage, shrinkage, cleavage, filtration, over-filling.)

The original figures approved were based upon a survey and estimates made by a committee of the Code Authority, assisted by an accountant, and accepted without objection by the 48 members of the Code Authority. The figures recommended were not uniformly approved by the Administrator, reductions being made in some cases. The original approval (May 11, 1934) was for a period of 60 days, but with some further reductions, was continued from time to time until November 26, 1934. (***)

Immediately after the original approval, the Code Authority, upon suggestion of the Administration, employed a firm of accountants (Peat, Marwick, Mitchell & Co., New York City) to conduct a survey of the Industry to determine the lowest reasonable costs for these three items for the various classes of products of the Industry. The accountants, with the cooperation of the Division of Research and Planning, prepared a questionnaire and a list of 164 members of the Industry to whom the questionnaire was sent. An effort was made to select large, medium and small firms, manufacturing all classes of products, in all parts of the country. Of these 164, 68 filled out and returned the questionnaire, but only 34 of these were usable; 19 members advised they could not furnish cost figures; 3 advised they did not manufacture the products of the Industry, and 74 made no response whatever. The 34 usable returns were from members doing a total annual business of more than $46,914,496, 4 of them failing to report annual volume. Upon the basis of these returns, the accountants computed and recommended for approval as the "lowest reasonable cost":

1. For processing, the weighted average of costs reported by lowest cost producers comprising one-third of the volume of the particular product.

2. For packaging, the average of the inter-quartile wage of costs

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(*) Code, Art. XXII, Amendment No. 1, Vol. I and II
(**) Statement of C. E. Willis, Asst. Deputy
(***) Code, Article XII, and Volume on Order #71 - 54

3. For losses before and during processing, the average of the inter-quartile range of costs. (*)

Based upon these recommendations, a new schedule of figures was approved on December 7, 1934, effective as of November 26, 1934, for a period of 60 days. (**)

The Assistant Deputy Administrator, C. E. Willis, verbally confirmed what was apparent from the record, namely, that in approving this last schedule, the recommendation of the accountants was accepted as to all figures which were lower than, or equal to, the ones previously approved, and was rejected as to all figures in excess of those previously approved.

Two requests for exemption were made, both from companies selling primarily to railroads. In only one instance the applicant complained that compliance with the Code was resulting in a loss of business to competitors, but inquiry by the Code Authority developed that the suspected competitors had not made the sales. In the other case it was urged by the applicant that his actual costs were lower than those approved, but this application was withdrawn and a request for permission to absorb all or a portion of transportation charges was substituted. Both applications were refused. Several charges of violations were made but none got as far as the Litigation Division. (***)

After the last schedule was approved, numerous complaints were received from members of the Industry to the effect that packaging costs for putty were unreasonably high, particularly for small packages. That there was justification for these complaints is evident. It is common knowledge that a one-pound case of putty retails for 10¢, usually with 3¢ to 3½¢ profit to the retailer. The "packaging cost", (labor and overhead to transfer from bulk to package), for one-pound cans was fixed at 2.4¢. These complaints resulted in a recommendation for a reduction to 1.4¢ at the time later schedules were submitted, but no later schedules were ever approved. (****)

On January 23, 1935 (two days prior to expiration of schedules) the Deputy Administrator recommended approval of a new schedule which would have included additional products and effected reductions in some of the figures previously approved. The recommendation was referred to the Advisory Council which, in a majority report, recommended approval with a proviso that suitable adjustment be made for any member who could show that, because of his lower costs, the code provision was unfair to him.

(*) Report of Peat, Marwick, Mitchell & Company
Code, Art. XXII, and Volume on Order #71-54

(**) Administrative Order No. 71-54, December 7, 1934.

(***) Administrative Order No. 71-40 (10/2/34) Chas. R. Long, Jr. Co., Louisville, Ky. Administrative Order No. 71-48 (11/13/34) Frazier Paint Co., Detroit, Mich.

(****) Letter dated December, 20, 1934 from Perry & Derrick Co., Cincinnati, Ohio
" " January 24, 1935 from Mar-Kay Mfg. Co., St. Louis, Mo.
" " January 24, 1935 from Steelcote Mfg. Co. St. Louis, Mo.
Deputy's files, N.R.A.

A minority report by the representatives of the Consumers' Advisory Board took the position that the schedules should be based upon facts, that the effort to secure information regarding costs showed this information could not be obtained and that lack of data should preclude approval of schedules.

The Consumers' Advisory Board, in its minority opinion, referred to the fact that the accountants in submitting a preliminary report on November 14, 1934, had stated:

> "The results displayed, it should be clearly understood, are not in our opinion acceptable in their present form as the basis of proclaiming lowest reasonable cost or loss factors according to the provisions in the code, and we do not submit them as final and representative."

Attention was further directed to the fact that the final report of the accountants had been based on data from only six additional establishments and that in this connection the accountants had made the following comment:

> "It will be recognized from the foregoing illustration of the computation of the weighted average cost of the lowest-cost-one-third production, that had the information been more complete, so far as the number of members represented is concerned, the computed results would probably be different, although it cannot be estimated to what degree. * * * *" (Decision #169, Advisory Council, Feb. 8, 1935).

These recommendations were submitted to the N.I.R.B. which, at its meeting on March 20, 1935, decided that the schedules should not be extended. To avoid confusion and uncertainty in the industry, the entire article was stayed on April 27, 1935. (*)

Subterfuges are not of record but Assistant Deputy Willis, from his conversations with members of the Code Authority, advises they were of two general types, first, a simple refusal to disclose formulae on the ground that they were valuable business secrets, thereby forestalling any determination and, second, a plea that bids at prices below cost were made unintentionally, usually because of typographical errors.

The sales below cost provision was regarded by members of the industry as the heart of the code. At the time Office Memorandum No. 228 was promulgated, the accompanying publicity was misunderstood by numerous members who formed the impression that N. R. A., by a blanket order, had deleted the provision. This resulted in the receipt of forty-three protests against any such action by N. R. A. The decision of the N.I.R.B. not to approve or extend a schedule of costs created bitterness in the industry.

(*) Administrative Order No. 71-66, April 27, 1935.

The only member of the Industry who openly expressed satisfaction at the action of N. I. R. B. was Mr. Wm. M. Rand of the Merrimac Chemical Company, Boston, Mass., who stated that the refusal to approve processing costs would give him an opportunity to continue in the lacquer business without injury from arbitrary restrictions. (*)

An examination of the fluctuations of the Bureau of Labor Statistics index of wholesale prices of paints and paint materials between January 1933 and October, 1935, renders possible a degree of objective appraisal of the effect of the Code. The index (1929=100) rose rapidly from 71.8 in January, 1933, to 82.1 during July of that year, presumably reflecting in part the effects of Code anticipation. During the life of N.R.A., fluctuations were limited, ranging from a low of 80.2 in October, 1933 to a high of 84.6 in May and June, 1934. The lapse of the price provisions in March, 1935 is not reflected in any appreciable change in the index. During September and October, 1935, new post-depression highs were recorded. It is, therefore, probable that by the spring of 1935, at least, the effect of the price provisions of the Code on the price level was negligible.

E. Fertilizer Industry -

The Code as originally proposed would have prohibited the sale of fertilizer or fertilizer materials at a price below the lowest reasonable cost plus a reasonable profit. This proposal was unacceptable to N.R.A. and the Code, as approved on October 31, 1933, contained the usual provision prohibiting sales below cost, except to meet competition. A price filing provision was also included in the Code.

This Industry has long had a well organized trade association. This association had developed a cost system that was in use by 65 industry members prior to N. R. A. Consequently, there was little delay in the submission of the system for approval. (**)

The cost formula for the Fertilizer Industry had the distinction of being the first formally approved by N.R.A., on February 24, 1934. (***) The formula as approved appears to have included relatively few arbitrary features. (Material costs were to be computed as the combined average of the actual cost of materials in the plants and of commitments or contracts made at the time the cost computation was made or the price schedule filed.)

An intensive educational campaign conducted by the association resulted in the installation of the approved system or its equivalent by nearly all except the smallest industry members. (****) Probably the most pressing problem from the standpoint of the industry members was one

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(*) Code Volume II - Protests
Letter from Wm. M. Rand, April 12, 1935; N.R.A. files

(**) Transcript Public Hearing, Sept. 6, 1933. Speech, John Moran, Cost Acct. Nat'l Fertilizer Assn. Nat'l Assn. Cost Accts. Year Book, 1935.

(***) Administrative Order 67-4, February 24, 1934

(****) Statement of Mr. Ritnour of National Fertilizer Association, February 11, 1936, to Mr. A. C. Simmes of the Minimum Price Unit.

of distribution. Originally, the usual channel was through the independent wholesaler. However, it was alleged that the wholesaler, during times of depression, would play one producer against the other until there was a marked decline in price. As this condition had been prevalent for some time and no means of stopping this practice presented itself, the majority of producers changed over to the direct agency method of distributing their products and quoted on a "consumer, delivered to the farm" basis. Commission salesmen were also discontinued except in two regions, as it was found that these salesmen would split their commissions with customers. (*)

There is a paucity of information about the actual administration of the cost provision, but apparently it occasioned little controversy within the industry and was generally complied with. (**)

Mr. Ritnour of the Trade Association stated to a member of this Unit on February 10, 1936, that the industry considers the cost provisions of the Code as having been distinctly beneficial.

An objective measure of the combined effect of the Code provision and the change in the distributive system may be to some extent traced in the fluctuations of the price index of mixed fertilizers and fertilizer materials depicted in Chart V.

It will be noted that about the middle of 1932 the price of mixed fertilizer commenced dropping much more sharply than that of fertilizer materials, so that in June, 1932, the former index was 12 points under the latter. During the latter part of 1933, however, the mixed fertilizer index possibly in anticipation of Code effects, rose more sharply than that for fertilizer materials and, shortly after the approval of the cost system, crossed it.

The mixed fertilizer index then stabilized within a relatively narrow range, but appreciably above the fertilizer materials index, for the remainder of the life of the Code. Subsequent to the Schecter decision it dropped sharply, and in October, 1935, was again three points below the fertilizer materials index. To the extent to which these indexes may be considered as representative, the effect of the cost provisions of the Code on fertilizer prices may be regarded as having been quite marked. The sharp drop subsequent to the Schecter decision may be interpreted as indicating that prices under the Code had been raised to a higher level than market conditions alone would warrant.

This effect was not achieved without protest from consumers of the product. At the price hearings held during January, 1935, Mr. A. S. Brower, Director of the Division of Purchase and Contract for the State

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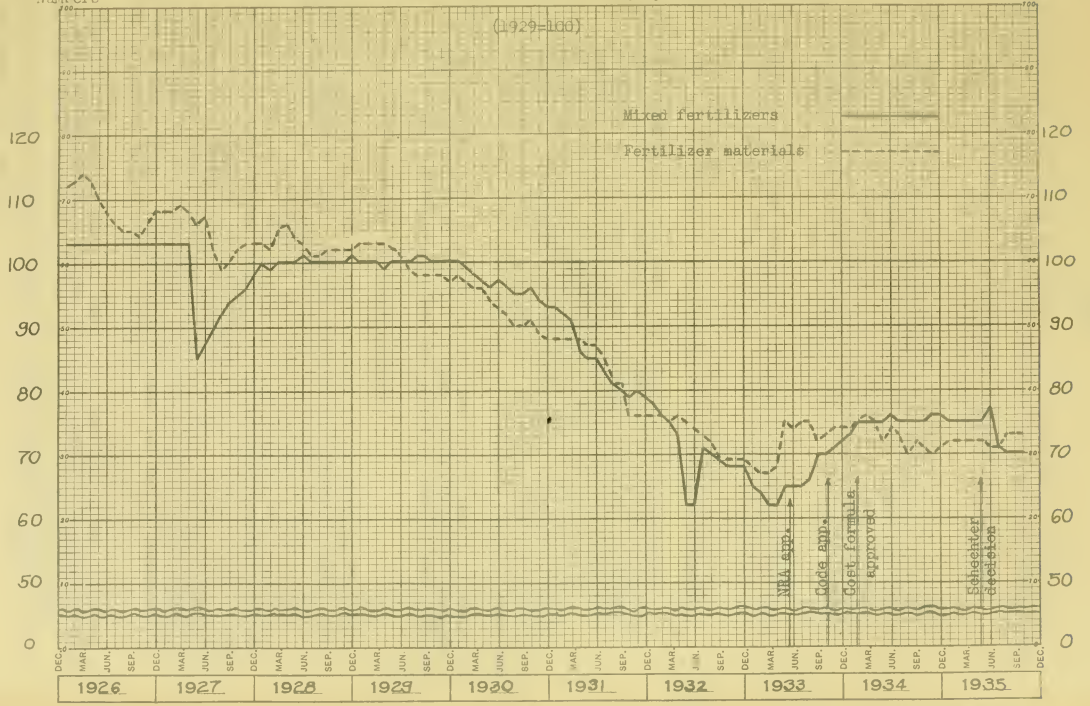
(*) Transcript of Hearing, January 9, 1935, p. 138.

(**) In a speech delivered before the National Association of Cost Accountants in June, 1935, Mr. Moran, Cost Accountant for the Association, said: "I did not find a single case where the records indicated that a sale had been made below cost." Yearbook, National Association of Cost Accountants, p. 935.

FERTILIZER INDUSTRY

9763

Index of Wholesale Prices of Fertilizer Materials and Index of Wholesale Prices of Mixed Fertilizers, by Months, 1926-1935



Source: Indices of the Bureau of Labor Statistics, shifted to 1929 base. N.R.A. Division of Review.

of North Carolina, appearing as personal representative of the Governor of that state, submitted a brief which included the following allegations:

1. That one-seventh of all fertilizer manufactured in the United States was used in North Carolina.

2. That one of the principal sources of competition to the sale of mixed fertilizer was the use of the ingredients from which it was made. Under the Code, control was assumed over the resale of all ingredients, prohibiting their sale in smaller amounts than the standard mix, thus largely withdrawing any possibility the farmer might have had of reducing his costs through direct mixing of ingredients.

3. The price of some items had increased as much as 80 per cent, far out of line with increases in the wholesale market.

4. The effect was "to have unwittingly created a horizontal trust that amounts to and results in a practical monopoly."

5. That agents (distributors) were bound to maintain resale prices set by the manufacturers and had to make a contract to comply with the Code for the Fertilizer Industry, accepting personal liability for failure to comply with any provisions of the contract, and agreeing to forfeit all compensation earned or to be earned if the provisions of the contract were violated. A merchant was not qualified as an agent or compensated until he had sold as much as 100 tons. Individuals distributing less than 100 tons were only allowed quantity discounts.

6. That goods remaining on hand with agents from season to season were required to be sold in accordance with any new or changed price lists immediately after the effective date of such lists.(*)

F. Fire Extinguishing Appliances Industry -

The Code for this Industry was presented by the Chemical Fire Extinguisher Association, Inc., and was approved on November 4, 1933. Two schools of thought divided the Industry in its opinion on price. The majority (consisting of members of the trade association) were in favor of a high price structure, whereas the minority (outside the trade association) favored lower prices. Members of the trade association were all manufacturers of "approved" devices (manufactured to specification to meet the requirements of Underwriters Laboratories, Inc., Chicago, Ill., or the Associated Factory Mutual Laboratories, Boston, Mass., and the approval of the United States Bureau of Standards for devices used on vessels plying in United States waters.) The volume of "unapproved devices represented but a small part of the Industry's production.

"Unapproved" devices were included under the Code at the behest of N.R.A., and the former Code Authority Secretary stated to a member of this unit that the Code Authority held more or less aloof from interference

(*) Public Hearing on Price Provisions in Codes of Fair Competition Supplement, pp. 165-193.

with the conduct of business by the manufacturers of such devices.

Manufacturers of "unapproved" devices had no representation on the Code Authority.

The preponderant group prevailed, and was responsible for inclusion in the Code of such provisions as: mandatory customer classification, mandatory discounts applicable thereto, and "lowest representative cost", which prevented sale of Code products at prices below the cost of a "representative" member whose costs were lowest, and whose "representative" nature must include employment of a research organization, educational publicity and sales promotion for marketing a complete (representative) line of products of the Industry.

The only element of price fixing not employed was the setting of individual list prices, yet such omission was counter-balanced by the attempted fixing of "floor" prices below which rigidly controlled discounts could not penetrate. Thus, in effect, a complete price rigidity was established, as evidenced by copies of price filings of 49 industry members contained in the Deputy's files. (*)

Numerous criticisms of Code provisions affecting price were registered at the public hearing and through letters. Such criticism was directed against:

(1) Granting the Code Authority power to fix arbitrary cost or prices. (**)

(2) Method of establishing "lowest representative cost".

It was charged that only 2 or 3 concerns could claim to qualify as "representative" under the Code definition, and that smaller concerns would be forced to take the lowest cost of that limited group. The manufacturer of devices which were not so well known as those of the larger manufacturers (who through long establishment, advertising and wider distribution had created a better demand for their products) could not compete with the latter without some price differential to compensate for lack of prestige. The general contention of objectors was that they should be permitted to follow their own individual costs in the establishment of selling prices. (***)

(*) Code History - Price and Accounting Provisions
(**) General Fire Truck Co., Buffalo Fire Appliance Corp., Kent Extinguisher Co., Exo Co.
(***) Letter Oct. 10, 1933, General Fire Truck Co. to Secretary, Code Authority
" Oct. 13, 1933, Buffalo Fire Appliance Co. to " "
" Oct. 20, 1933, Kent Fire Extinguisher Co. to Administrator
N.R.A. files

(3) Mandatory definitions of Trade Factors and mandatory differentials. (*)

(4) Inclusion of makers of "unapproved" devices under the Code.(**)

The following are the principal criticisms and suggestions of the N.R.A. Advisory Boards concerning cost and price provisions:

(1) Substitution of individual costs for "representative" costs,(***)

(2) Permit each member to establish his own differentials. a/

(3) Permit each member to use his own cost system if already installed. b/

(4) Proposed cost formula did not give any consideration to possible effect on costs of the utilization of different channels of distribution. c/

(5) Objection to definition of Trade Factors and Differentials - the tendency would be to fix both the cost and selling price of the appliances. d/

(6) Suggestion that material be valued at the lower of cost or market, and that selling and administrative expenses be eliminated from "costs". e/

No summary of post hearing conferences is available, but apparently the comments and criticisms of opponents failed to bring about any material changes in the proposed Code.

Promptly after the approval of the Code, the Code Authority acted with great rapidity. The Assistant Deputy then in charge of the Code construed the language "approval of Administrator" to warrant issuance of written approvals over his own signature, unsupported by any advisory report or any findings of facts. On December 12, 1933, the Assistant Deputy wrote the Secretary of the Code Authority as follows:

"The differentials included in your letter of December 4 are herewith approved.

"With respect to your letter of December 11, enclosing memorandum with respect to that clause in the Code defining representative costs, the interpretation set forth below should be made a part

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(*) Letter Oct. 13, 1933, Buffalo Fire Appliance Corp. to Secty. Code Autho
(**) Testimony of Powell Evans of the Merchant & Evans Co. at the Public Hearing of October 23, 1933.
(***) Memo. Consumers' Advisory Board to J. K. Ammerman, Deputy Admr. November 2, 1933.
(a/ Memo. Geo. D. Haddock of Consumers' Advisory Board to J. K. Ammerman, Deputy, Nov. 3, 1933.
b/ Memo. H.F.Taggart, Research and Planning Division, to K.J.Ammerman, Deputy, May 21, 1934.
c/ " " " " " " " "
d/ Memo.J.E.Hughes, Research and Planning Div. to Dep. Adm. May 8,1934.
e/ Memo. M.S.Massel, Consumers' Advisory Board, May 17, 1934.

of the record and is herewith approved, in view of the peculiar circumstances surrounding the first reports received with the idea that a more definitive interpretation will be submitted for the approval of the Administrator on or before February 1, 1934."(*)

It is to be noted that the approval of the "Cost Accounting System" had not previously been asked, and had not been given by the Administration. After receipt of the Assistant Deputy's letter, the Code Authority directed members of the Industry to desist from selling below "representative costs" as "established as aforesaid".

In June, 1934, the Division Administrator advised the Code Authority that its ruling dealing with definitions of trade factors, price differentials and representative costs had been disapproved, and it was specifically pointed out that "representative costs" must await Administration approval of the uniform system of cost accounting provided for in Article VI of the Code.

The Code empowered the Code Authority to establish a "Uniform System of Cost Accounting" in conformity with accepted standards. Such system when approved by N.R.A., was to be mandatory on each industry member, and was to be used for the determination of each individual member's cost. Upon determination, such costs were not to be used as a yardstick to determine a "no-selling-below-cost" provision, but rather were the vehicle whereby "lowest representative cost" was to be determined.

A proposed cost accounting system was submitted by the Code Authority on March 26, 1934. The system as revised was approved on July 20, 1934.

The Uniform Cost Formula, as proposed, provided for valuation of material at current market prices, with overhead to be computed on the basis of normal rates of operation. The only changes affecting determination of cost made in the formula submitted at the public hearing before final approval were: (1) material to be priced at actual cost or market, whichever is lower; (2) cash and trade discounts (on material purchased) should be deducted from material cost. (**)

Although the improper approvals of "lowest representative costs" and of customer classifications and discounts applicable thereto were withdrawn by N.R.A., yet these provisions were adhered to by the majority of the industry throughout the life of the code. (***) This may be

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(*) Letter from J. Reed Law, Asst. Deputy, to Code Authority, Dec. 12,1933.

(**) Administrative Order No. 98-5, July 20, 1934

(***) Code History, pp. 47-48

explained perhaps by the concentration of almost the entire output of the industry in the hands of a few concerns, among whom informal agreements could easily be effected.

The Code Authority filed no less than 33 complaints of non-compliance with code provisions, such as failure to file reports of individual costs, schedules of prices, reports of wages and hours, etc. These were filed with the Government Contracts Division of N.R.A. against bids on Government proposals, in an effort to have these bids rejected. (*)

A letter from the Code Authority, dated May 3, 1935, addressed to two members of the Industry, revealed an effort to control the selling activities of distributive factors through their sources of supply, and thus to secure resale price maintenance. The Assistant Deputy in a letter to the Code Authority made the following statement:

> "While it is obviously impossible to undo the effect caused by the above-named letters, you are requested to take no further action of any nature which would expressly or by implication be construed as an attempt to control any elements of the trade not amenable to the Code * * * * *". (**)

The Federal Trade Commission filed a complaint on April 4, 1935, against 17 companies, the officers thereof, and the individuals constituting the Code Authority. It stated that the respondents manufactured and sold practically 85 per cent of all fire extinguishers, equipment and supplies manufactured and sold in the United States. It charged that the respondents, in February, 1932, entered into a combination to fix and maintain uniform prices; agreed that they would not singly solicit customers of another or quote them prices lower than those quoted by other manufacturers; refused to continue to sell at prices less than those fixed by respondents; agreed upon prices to be bid where competitive bids were called for; procured withdrawal and cancellation of bids in cases where bids were at prices less than those fixed, and used other and similar means to suppress and prevent price competition.

A Cease and Desist Order was issued by the Federal Trade Commission on November 18, 1935.

On June 8, 1934, the Assistant Deputy wrote the Code Authority requesting consideration of new policy by the Code Authority, (in line with Office Memorandum No. 228), with a view toward Code amendment. The reply was to the effect that the Code as originally prepared was better suited to the Industry than Office Memorandum No. 228. Despite further informal discussion of the entire price filing structure with the Code Authority's

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(*) Code History, p. 65

(**) Letters from A. O. Boniface, Secty., Code Authority, May 3, 1935, to Buffalo Fire Appliance Corp., Buffalo and Miller-Peerless Mfg. Co., Chicago.
Letter from Alfred Hand, Asst. Deputy, to A. O. Boniface, Secty., Code Authority. Folder No. 9, Deputy Files.

Secretary and various members of the Code Authority, it was early evident that the Industry which had been granted a waiting period applicable to price filing, a mandatory cost accounting system, and "lowest representative cost" would not willingly forego such apparent advantages in favor of newer N.R.A. policy.

G. Graphic Arts Industry - Commercial Relief Printing

The first national code covering the printing industry was drawn up at a conference sponsored by the United Typothetae of America at its meeting held in Chicago, July 13 and 14, 1934, which was attended by more than 75 representatives of the leading printing establishments in the country. This tentative code covered simply the Commercial Relief Printing Industry. At that time a permanent code committee of 35 was set up to guide the code to final completion. On August 17 and 18, 1933 a code conference was held in Chicago of Graphic Arts Industries which had contemplated filing separate codes to consider the possibilities of a basic code to include all. After protracted public hearings in September, October and November, 1933, a basic code was formulated covering 26 industries and 5 service trades, employing graphic arts processes. Industries which were granted separate codes were Photo-engraving, Electrotyping and Stereotyping, Book Publishing, Music Publishing and Metropolitan Daily Newspapers (not assenters to the Graphic Arts Code). The Graphic Arts Code, including within its scope practically all publishing, printing and allied processes, was one of the most detailed and complicated approved by the NRA. It is a document of compromise between strong and conflicting interests. It is verbose, redundant and its language difficult of interpretation.

Code formulation afforded an opportunity for New York City printers to endeavor to secure protection of their relatively high printing costs against the inroads of competition from sections where labor costs and manufacturing expenses were lower. Considerable opposition developed from lower cost areas against any imposition of the New York labor standard on the rest of the country. The Mail Order Association of America, claiming annual purchases of printing aggregating $30,000,000.00 by its members in normal times, objected to further increases in printing costs on the ground that catalog printing volume would be reduced proportionately. Non-union shop representatives objected to increasing their labor costs to the Union scale, and to increasing the number of pressmen and feeders in conformity with the union standard complement. (*)

Considering the differences in size of establishments, their varied mechanical equipments, the diversity of products, and the different techniques which are utilized in their manufacturing, it can be appreciated that to devise a cost system applicable to all these variations was to say the least, a difficult task. As a result, most of the Code Authorities found it necessary to use very flexible and, in many instances, vague definitions of items entering into cost. The Code provided that declarations of costing devices might be made subject to "review" of the Administration. The interpretation of the word "review" which was finally made after considerable confusion, was that a declaration became effective without prior approval of the Administration, subject, however, to the qualification that the Administrator reserved the right to disapprove the declaration.

(*) Transcript of Public Hearings. September 18 to 21, 1933.

The Code prohibited the sale of product or services below cost, with two exceptions; one was to meet a bona fide competitive bid and the other was that any newspaper or periodical might be sold at less than the cost thereof, and any advertising newspaper might be delivered without cost to the reader.

Accounting and Cost Finding provisions of the Code are quoted in part below:

"(c) Cost Determination. After the principles and methods of accounting and cost finding and/or the departmental economic hourly cost rates and production standards and/or cost determination schedules for an Industry have been declared and prescribed as provided in paragraphs (a) and (b), each establishment therein shall determine the costs of its products:

1. In conformity with the principles and methods of accounting and cost finding as provided in paragraph (a); or

2. Upon departmental economic hourly cost rates and production standards as provided in paragraph (b), including the cost of all materials used, or

3. Upon cost determination schedules as provided in paragraph (b); it being understood that an establishment may use the method, herein provided, resulting in the lowest costs of its products. Until the methods for determining costs as above set forth are prescribed, it is intended that each establishment will use such a method as has been prescribed; except that until the cost finding method provided in paragraph (a) has been prescribed by its National Code Authority, an establishment having an adequate cost finding system may use such system, subject to the review of its National Code Authority." (*)

The Code also provided that any National Code Authority might publish or approve for its industry, or for any defined geographical area, price determination schedules, subject to the review or approval thereof by the National Graphic Arts Coordinating Committee. Such schedules when approved were to serve as guides of fair value.

The Commercial Relief Printing Code Authority made declarations of the following:

Standard Cost Finding System (declared Feb. 27, 1934)
Departmental Economic Hourly Cost Rates
Cost Determination Schedules
Price Determination Schedule (Approved April 27, 1934, Administrative Order 237-6)

(*) Code for the Graphic Arts Industries, Article III.

The Standard Cost Finding System, which was declared the first day the Code became effective, was the system for determination of individual costs adopted by the International Cost Congress of the United Typothetae many years before the Code. It set certain accounting standards to be used by the member to determine each month hourly costs on each manufacturing operation to be used as a basis for his current pricing of printing estimates and finished jobs. The System was found too elaborate for economical installation and operation in the very small shops. A simplified cost system was declared by the Code Authority on June 21, 1934 in an attempt to overcome this objection but many complaints were made by the small printers that the "simplified" system was also too complicated.

Economic Hourly Cost Rates were rates promulgated by the Code Authority to show the all inclusive costs of operation of each department, such as hand composition, proof-reading, linotype, monotype, etc. To ascertain the cost of the job produced, the member would multiply the time consumed on the job in each department by the respective rate and add the cost of materials used.

Cost Determination Schedules listed the specific cost for a complete printing job, such as 10,000 letterheads, 100,000 envelopes, etc. The costs in this schedule did give effect to the variation in size and quantity for an order. From the standpoint of simplicity, cost determination schedules made it easy for a member to select the figure on which to base his selling price. He had but to refer to the schedule for the particular product, and to the schedule figure add his percentage of profit.

The Price Determination Schedule prohibited any establishment from selling or offering to sell any product at a price less than 10% below the price contained in said schedule. This prohibition, however, did not apply to any single order exceeding $500, nor to any combined order exceeding $5000 nor to any order actually contracted for and exceeding $5000 per annum. It further provided that an establishment with a total press equipment consisting of not more than three platen presses might be authorized to sell or offer to sell any products manufactured on such equipment at a price not less than 20% below the prices contained in the Schedule. The same order also provided that an establishment which used a method of cost accounting prescribed by its National Code Authority, or if such a method has not been prescribed, an adequate cost finding system, and could thereby determine its costs for such products as lower by more than 10% than those listed in the schedule, might sell such products at not less than the costs so determined upon submitting to its National Code Authority satisfactory proof of the accuracy of such costs.

The prices quoted in this Price Determination Schedule were extracted in every instance from the figures listed in the Franklin Printing Catalogue, a book of approximately 900 pages issued by the Porte Publishing Company of Salt Lake City, Utah. The Price Determination Schedule is set forth in a book of 48 pages and is limited to the items in most frequent demand.

The 20% provision was inserted for the benefit of the smaller establishments. However, N.R.A. files indicate that the Code Authorities were reluctant to grant this permission to applicants. The competitive difficulty in which this provision placed other small printers whose equipment exceeded three platen presses may readily be realized. It is probable that this Price Determination Schedule resulted in a large measure of "stabilization" for the Industry on the particular products which it covered.

On cost devices, such as the Cost Determination Schedules and Economic Hourly Cost Rates, it was the experience of the Administration in practically every instance that Code Authorities were unable to furnish the required supporting data to show that they had been compiled from the cost records of comparable and representative establishments.

N.R.A. files indicate that the Code Authorities approved very few cost systems for industry members. Considerable delay also occurred between the time of application for approval of cost systems and the date on which approval was finally given. This was due in large measure to the fact that establishments presenting applications did not submit adequate data in the first instance in support of their cost finding systems and also to the lack of sufficient competent personnel employed by the Code Authorities to pass on the adequacy of cost finding systems. (*)

The provisions of Section 26 prohibiting sales below cost were found very difficult to enforce. In contrast to the wage and hours provision they did not lend themselves to self-policing. There was no general conviction on the part of the general public that price cutting was undesirable. In the absence of a fixed price floor it was practically impossible to find a basis on which to test compliance. In many specific instances of alleged non-compliance, the services of accountants were necessary to make definite inquiry as to what constituted cost of production. Such investigations entailed considerable time and there were instances in which accountants disagreed as to whether or not the establishment was selling below cost. Compliance cases were therefore long drawn out. Often adequate data as to costs were unavailable. Considering the number of sales transactions which even a small establishment may have in any year, the magnitude of the task of investigating charges of sales below cost can be appreciated. It should be remembered that with prices generally based on estimates and agreed upon in advance of production, even though proper hourly rates for composition, presswork and other operations are adhered to in the estimate, there is always a chance for a discrepancy, intentional or otherwise, between the time estimated for each operation and the time actually consumed on the specific job.

(*) Oral statement of M. D. Walsh, Assistant Deputy in charge of Cost Systems in Graphic Arts Division.

The Administration was very reluctant to issue orders disapproving the use of departmental economic hourly cost rates and cost determination schedules as it realized the demoralizing effect that such disapproval would have on the industry and on the confidence of the industry members in their Code Authorities.

The nature of the industry precludes the possibility of a definite price index and data indicating price trends are scant and spotty. Reports from Code agencies in various localities indicated that cost recovery provisions of the Code were definitely working toward price "stabilization" and higher average prices and that a considerable rise in prices had been noted since the Code became effective. (*) The impression gained from recent contacts with trade associations and supply house officials is that present price trend is upward due partly to increases in material prices, and that there is evidence of more prosperous conditions in the industry.

Perhaps the best available description of the various price control devices included in the Graphic Arts Code, together with a critical evaluation of their operation, is contained in a decision of the Advisory Council, dated April 23, 1935. Pertinent extracts from this decision follow:

"(1) Weaknesses of the accounting methods used.

"One of the few points upon which the variegated industries sponsoring this code seem to agree is the desirability of bolstering prices. One interesting demonstration of this attitude lies in the fact that it was originally intended to make the second paragraph of Sub-section (d) a price rather than a cost determining provision, and the sponsors of the code yielded to the substitution of cost for price only because of administrative insistence. Yet this paragraph, if by any means and at any time the consent of the Administration to action under it could have been secured, would even now sweep aside all of the price provisions having any clear base in costs. It is likewise notable that the industry has taken pride in being able to announce from time to time the number of prices reported under the code's open price filing provision which had been disallowed and higher submissions ordered. Such actions were presumably taken because the prices filed showed a deviation from those pre-determined by the cost sections of the code; it is again only intention that is stressed.

"It has already been noted that each establishment was to be given the choice of three accounting procedures and could not sell below the cost yielded by whichever of these three procedures produced the lowest cost for that particular establishment.

(*) Code Administration Study (S. H. Reed and C. J. North), April, 1935.

"(a) The first of these was the adoption by each establishment of its own accounting system in conformity with the principles and as detailed and complete in method as laid down by the Code Authority. For years, the UTA has worked to develop a cost accounting system for the printing industry. Its educational efforts are entirely praise-worthy. However, there is a vast difference between the extension of the use of cost accounting on a voluntary basis for use as managerial statistics, and a compulsory system for use as a price-floor. There is no need for repeating at this time the whole argument concerning cost floors. Furthermore the Advisory Council has not examined in detail the actual accounting methods. It will be recalled that these are 'subject to review' by N.R.A., but have not as yet been actually subjected to such review. However, one special trouble here is that there is no real uniformity in the Industry. Sizes, types of equipment, character of market, and local operating costs vary to an extraordinary extent. The problem of developing uniform depreciation charges, regardless of the age of the equipment, has already received sufficient airing before the Senate Finance Committee. Quarrels have constantly arisen over whether or not individual systems were actually in conformity with official principles. The large establishments have long since adopted the UTA method of costing, but such of the smaller ones as made any effort to comply have often contented themselves with submitting some sort of bookkeeping records in the hope that they would get by. Less than 50% of the members of the industry have approved systems. The Code Authorities may have been perfectly right in disapproving many of them. The difficulty may lie not so much in improper actions on this score as in the essential incompatibility of small print shops and the mysteries of cost allocation. It is to be recalled in favor of the Relief Printing Code Authority that it put out two systems, one of them in abbreviated form for the express benefit of the small man.

"The Division Administrator minimizes the extent of the complaints rising out of this Sub-section, and believes that when the more glaring inequities of the code and its management are adjusted, the cost finding problem as such will yield to treatment. He proposes to review the approved systems, so simplifying them as to remove much of their objectional character.

"(b) The second optional determinant of cost is found in the Code Authority's declaration of 'departmental economic hourly cost rates and production standards.' The purpose is to set up a single hourly cost figure which, when multiplied by an hour's allowance for a particular job, will yield a definite cost estimate. Based upon a general industry figure, it is obviously intended to be a short-cut method of estimating cost where no cost accounting system exists, or time is short.

"It is generally conceded that these cost rates are not perfectly applicable to any individual establishment. There are obviously too many variations in hourly rates for labor and its productivity, in the condition of various machines and their

consequently differing efficiencies, and in the resulting machine-hour and man-hour rates, in cost of supervision, advertising, overhead, etc., to recommend the practicability of combining them all into one rate. Even if treated separately, the effort to establish forms for them that would be representative of anything in particular is of dubious color. Furthermore, these rates are not limited to direct costs, but include overhead as well. Considered jointly, overhead expenses have no necessary relationship to hourly rates of wages paid to direct labor and vice versa; they vary independently. Thus these figures crowd all overhead, administration, selling, and direct labor into the same cost factor. Moreover the provision is silent as to the level, high, average or low from which this colloidal rate was to be struck, or whether it was to be arithmetical or weighted. The real result has been that this particular option has been used by the larger establishments to whose fairly orthodox operations it might roughly correspond, and ignored by the others. It should be noted that these rates have been applied with some flexibility. The rates used in Detroit, Chicago, and San Francisco for example, are higher than those in other cities.

"(c) The cost determination schedules, the third option, have been nothing more than a cloak for the Industry's pre-code price schedules which even in those days achieved the distinction of a Federal Trade Commission 'cease and desist' order. As previously noted, these were subject to the review of the Administration, which took an uncertain position about them from the beginning. Many letters were written by N.R.A., most of them according to report dodging the issue by vigorous declarations that the Franklin catalog and its companion schedules had not been approved. The option to 'review' has never been taken up.

"It is important also to note that both the economic hourly cost rates and the cost determination schedules were required by Sub-section (b) to be compiled from 'comparable and representative establishments.' The submission of data in the form of statements from 200 odd printers can obviously prove little about the costs of an industry numbering 17,000 members. * * * It is against the Franklin Schedule that protests of small members have chiefly been directed. The Division Administrator predicts that if these schedules are removed, 90 per cent of the objections of the industry surrounding the Graphic Arts Code will disappear.

"(d) The 'Price Determination Schedule' of Division Administrator Buckley has developed into one of the most unique phenomena of N.R.A.'s unique career. There is no basis whatsoever for it in the code, and yet, in an industry fairly bristling with price fixing and cost protection, it is the cost-protecting formula most generally respected. Yet, obviously it must go, and the present Division Administrator is prepared to dismiss it with the Franklin catalog.

"(2) The faulty Economics of Section 26.

"The charge here is essentially that almost all of Section 26, is contrary to policy and the economic reasoning lying behind policy. The Council does not wish to appear to object to cost accounting as a useful device. It does object to the employment as providing a floor for prices. It is even more disturbed by the use of industry averages as appearing in the figures for departmental economic hourly costs. It is doubtful if any mandatory cost protection system can be devised which would not impose injurious restrictions on a large section of the Industry's membership. The elements of cost vary hopelessly from plant to plant and area to area. Small plants sometimes have an advantage in cheaper rents and the use of less costly equipment, but the larger plants usually overcome this by volume. Many plants cannot control their working hours, for the reason that they print so many small magazines and bulletins on a time schedule. By way of example, if their labor has to be kept on hand and their linotypes held in readiness for a particular hour of the day at which copy is scheduled to arrive, a small job to fill in the time is the kind of boon that keeps them alive. Under such circumstances all formalized cost estimates go out the window. This is true of many industries, but of this one particularly.

"The Council is aware that the Industry is distressed by the monotonous appearance and disappearance of small hall-bedroom printers who run out their shoe-string through a series of impossibly low bids and are replaced by others, but nevertheless feels that stratified price fixing for an industry in which there are no distinguishable strata is medicine of the patent type. Maintenance of high prices is hardly a sensible approach to the problem of excess or irresponsible capacity, unless supported by the army, the navy and the marines. Price floors in terms of individual costs are a degree less objectionable, but against them run all of the objections that led to their elimination from general policy. Just how real the option is to follow one's individual costs, it is impossible to say. Certainly, more than half the plants have not as yet availed themselves of the opportunity.

"(3) Cumbersome organization and non-representative code authority.

"It is alleged that this code in one way or another overlaps most of the other codes that have been written by N.R.A. Almost anyone who does printing was originally subject to it, no matter how private the purpose; this definition was later modified by Administrative Order because of the difficulties and impossible administrative situation it produced. Even if considered in the narrower sense of commercial jobbers, the Industry is farflung, comprising 17,000 units and representing every conceivable variety and size of printing establishment. The United Typothetae of America, which is set up by the code as the National Code Authority for Commercial Relief Printing, is divided into 17 zones and 116 regions. N.R.A.'s contact with them has to be transmitted through

the National Graphic Arts Coordinating Committee, the United Typothetae of America in its capacity as Code Authority, and the numerous zonal Code Authorities corresponding to the Typothetae's regional agencies. The size of the Industry and the telescoping process through which action must pass has made N.R.A.'s touch on ultimate events an excessively light one.

"The lightness of N.R.A.'s control is complemented by a correspondingly heavy concentration of authority with the UTA. Because of the fact that the National Directors of the UTA are dependent for their positions on the good will of the regional groups, there is a further inevitable release of central authority to less responsible agencies, so that NRA can never be quite sure of what is being done. The dangers in this situation are enhanced by the fact that UTA is allegedly dominated by the larger members. The net effect of this series of relationships has led to the charge that the power of the Government is exercised throughout the communities of the country by large printers over the small ones. This may be responsible for much of the controversy arising out of efforts to administer the code. It is reported that opposition to the Typothetae has been so definitely stimulated by code events as to have provoked the organization of rival associations in several regions. The Council has not been able to analyze all pertinent statistics, but there seems to be general agreement that the domination of the relief printing industry by the UTA is unwholesome and that broader representation in the Code Authority must be provided. The Division Administrator is personally determined on this move.

"(4) Alleged abuse of powers by Code Authority.

"The charge has been persistently pressed through recent months that the Typothetae's use of code powers has been high-handed. The following abuses have been cited: Collusive price fixing; coercion of non-members, of which there are many, especially among small plants; use of Code Authority funds for Trade Association regulations; carelessness with or misuse of confidential data; persecution of establishments refusing to comply with rulings of doubtful legality or propriety; domination of the many by the few in regions where the United Typothetae of America is a distinct minority, imposing fines and penalties contrary to the Code and the Act. (Many establishments are not aware of their rights of appeal from the Code Authority.

"The Council does not pretend to pass judgment on these charges. The industry is so widespread, the code so liberal, and the delegation of powers so great, that abuses were certain. There is no knowledge on the part of the Council that the Typothetae has not tried, according to its rights, to administer the code fairly. It might well regard the code as a mandate to go ahead with its program for improving the industry without check or hindrance by Anti-trust law or N.R.A. order. All of the circumstances were against a clean slate, as judged by present N.R.A standards and it is with these circumstances rather than historical charges that the Council is now concerned."

H. Coffee Industry

The minimum price proposal included in the first draft of the code submitted in August, 1933, jointly to the A.A.A. and the N.R.A. prohibited any member of the industry from selling "below his own actual cost of production as determined by uniform cost finding principles to be prescribed by the Associated Coffee Industries of America", with the one exception that he might meet the lawful price of a competitor.

This proposal evidently did not have the full and unqualified approval of the industry, nor of the proponents of the code. The draft of the code submitted in September, 1933 did not contain the "selling below cost" provision. This draft prohibited "Destructive Price Cutting" and, in the event of an alleged violation, provided for an examination of the records of the accused company by a firm of accountants to be selected by the Coffee Industries Committee. The code carried no definition of "destructive price cutting" and there was a short discussion in the Hearing held October 24, 1933, relative to the provision and the steps to be taken in determining whether or not a violation had occurred.(*)

This September draft also provided for the use of an accounting system by every roaster which would conform "to the principles and be at least as detailed and complete as the standard and uniform system that may be formulated by the Coffee Industries Committee."

It was claimed that the highly integrated concerns and those with large capital assets were gradually acquiring an increasing percentage of the total volume, thus tending toward monopoly. This was attributed to their ability to purchase enough green coffee in a low or declining market to carry them well into or through a rising market, and to their low cost of production and distribution. (**)

There was evidently sufficiently strong opposition from members of the industry to the proposal included in the August draft of the code, (which was similar to the one finally adopted), to cause it to be deleted from the draft submitted in September. NRA files contain practically no data relative to the members who objected or to the nature of their objections, although these were apparently directed against the use of a uniform cost formula.

(*) Transcript of Public Hearing, page 80.

(**) Letter from W. H. Williamson, Managing Agent of Coffee Industry Committee to Lester S. Dane, Assistant Deputy, dated January 16, 1935 (Deputy's files).
Letter from Holsted Coffee Company to Walter White, Deputy, dated May 24, 1934.
Letter from D. M. Nelson, Code Administration Director, to Senator Robert J. Bulkley, March 20, 1935.
Letter from Southland Coffee Company, March 30, 1934.
Letter from Walter White, Deputy, to William A. Kelly, Newark, N.J., March 5, 1934.
Letter of Robert M. Beattie, Administration Member, July, 1935.
Statement submitted by Sussaman, Wormser and Co., San Francisco, with letter dated January 30, 1935.

The final draft of the code submitted January 9, 1934, was worked out in conferences after full jurisdiction had been transferred to NRA.

The code, as finally approved on February 6, 1934, prohibited "destructive price cutting", and provided that no member of the industry should "sell roasted coffee below his own individual cost", with the two exceptions (1) that he might meet the lawful price of a competitor, and (2) that he could sell to government and charitable institutions at any price he desired. (Through an interpretation this last exception was ruled to mean only "government charitable" institutions and not all government institutions.) (*) It also provided for "open price filing" and for the use of an accounting system as complete and detailed as that formulated by the Coffee Industries Committee. The code further provided that "the Coffee Industries Committee with the approval of the Administrator shall from time to time set forth the elements which shall enter into cost."

The Cost Formula which was presented with the August, 1933 draft of the code was evidently prepared by the Associated Coffee Industries of America. As already indicated, there was strong opposition from members of the industry to this formula as it was not included in the minimum price proposal submitted to AAA in September, 1933. Mr. Williamson, Secretary-Treasurer of the Associated Coffee Industries of America, stated at the hearing, October 24, 1933: "We did submit, we submitted a cost schedule, with the previous codes, which is not before us at this time, and has not the support of the industry."

Apparently the larger units of the industry originally were not in favor of the cost formula, but finally agreed not to oppose it. (**)

The minimum price proposal included in the August, 1933 draft of the code provided that cost should be "determined by uniform cost finding principles to be prescribed by the Associated Coffee Industries of America subject to the approval of the President, such cost to include market replacement value of green coffee as determined by a committee authorized by the Associated Coffee Industries of America, a minimum shrinkage of 16 per cent, and cost of delivery incurred by the seller."

The final draft provided that "the Coffee Industries Committee with the approval of the Administrator shall from time to time set forth the elements which shall enter cost."

The salient features of the August, 1933 proposal were a set of "Principles and Procedure of Cost Finding Pursuant to the Provisions of the Code" and a cost chart which set forth the various elements of the cost of production and selling with the several factors which entered into each. These elements included:

(*) Letter from Walter White, Deputy, to W. F. Williamson, Secretary-Manager, Coffee Industry Committee, dated May 4, 1934.

(**) Report prepared by Robert M. Beattie, Administration Member, July 1935 (Deputy's file).

Green Coffee Cost
16 percent Shrinkage
Roasting Cost
Grinding Cost
Overhead
Selling and Delivery Expense
Shipping Container Cost, Packing Labor and share of Overhead for Bulk Coffee
Shipping Container Cost, Package Cost, Packing Labor and share of Overhead for Packaged Coffee

The August Proposal provided that "selling price, in the case of chain stores or retail distributors who operate coffee roasting departments, shall mean the price at which coffee is invoiced to the retailing department", and that "selling price in the case of a wholesale grocery company which operates a coffee roasting department shall mean price coffee is charged to the wholesale department." These were not incorporated in the draft submitted to NRA and in addition to shrinkage allowance was changed from 16 percent to 15 percent. An additional element, "Advertising Expense", is found in the draft submitted to the NRA. This had not appeared in the previous draft. (*)

After a number of conferences a cost formula was approved March 31, 1934. (**) The formula, as approved, contains a number of modifications from the draft submitted, the principal ones being:

1. The shrinkage percentage was changed from an arbitary 15 percent to actual shrinkage.

2. The proposed draft provided that, for those companies which had no accounting records or adequate data for determining cost according tothe Formula, cost should include, - Replacement Cost, 16 percent shrinkage, plus such additional mark-up for various operating functions as should be determined to be the average for the industry on the basis of a survey to be made by the trade association. This was deleted from the Approved Formula.

3. Depletion was limited to that portion of the plant and equipment actually in operation and used in processing of coffee.

4. The item of "Rent" was limited to rent that may be reported for income tax purposes.

5. The item of "Taxes" specifically excluded income taxes.

(*) Deputy files - Volume A, Part I.

(**) Administrative Order No. 265-4, dated March 31, 1934

6. An additional item was included showing the cost and weight of any material which is added to coffee. The cost figure arrived at per 100 pounds of such mixture was to be adjusted to reflect the presence of the cheaper adulterant.

7. The items of "Dues and Contributions" and "all other expenses" had been deleted under the heading of Overhead.

NRA files do not indicate what steps were taken to induce those members of the industry who had opposed the use of the cost formula to withdraw their opposition. The files contain little evidence of opposition to the proposal from members of the industry. This limited opposition came from a group whose profits were secured through speculation in the green coffee market; from Standard Brands, Inc., whose objection was that the replacement cost provision of the cost formula was unfair to, and worked a hardship on, their particular type of operation; and from one mail order company which insisted that certain provisions of the formula were detrimental to its sales policy. (*)

The changes which were made in the proposed formula, were evidently made upon the recommendations of the Deputy and various Advisory Boards.

The Consumers' Advisory Board objected to the use of "Market Replacement Value" in arriving at the cost of green coffee, and suggested that "Market Replacement Cost, or actual cost, of green coffee, whichever is lower" be used. This Board contended that as green coffee was the most important element of cost in the industry, "the consumer would be unduly penalized," because the use of "Replacement Cost" as proposed would eliminate such factors as "individual purchasing efficiency, the saving resulting from large purchasing power, and foresight in buying." The Deputy, in recommending approval of the formula, answered the objections of the Consumers' Board with the statement that use of the "least actual cost" would result in enabling "large buyers to throw large quantities of roasted coffee on the market at prices which would eliminate all competition and create monopolies for large buyers, particularly on a rising market."

The Consumers' Board also protested against the inclusion of "Selling and Advertising Expenses" claiming that they "are associated with the business policy of each individual in his attempt to gain as large a share of the market as possible" and "do not seem to fit in with the general policy of regulating the industry as a unit." The Deputy's reply was that "since four or five of the largest companies make heavy advertising expenditures to secure their volume, and the small and less efficient competitors could not possibly approach the cost of these large concerns,

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(*) Transcript of Hearing April 30, 1935, Vol. I, page 78.
Transcript of Hearing June 12, 1934 before National Compliance Council, page 201.
Code Authority Minutes of Meeting held May 14, 1934 (General files).

excluding advertising expense" he believed "Advertising and Selling Expense" should be included. (*)

The Code Authority and the Trade Association, which were closely allied, apparently made every effort to keep the industry well informed through bulletins issued to members. One bulletin issued by the trade association carried a complete reprint of the cost formula as adopted. Subsequent bulletins carried information relative to interpretations of sections, and points concerning which some question had been raised.

The Code Authority, in addition to the bi-weekly bulletin containing the replacement cost of green coffee to be used in the application of the cost formula, issued other bi-weekly bulletins from July 3, 1934, to November 31, 1934, setting forth a suggested cost for roasted coffee. This suggested roasted coffee cost was composed of the following elements:

Replacement Cost of Green Coffee
1/2 cents per pound for roasting cost
15 percent of green coffee cost for shrinkage
5 percent of green coffee cost for Overhead (this included rent, light, heat, billing cost and executive salaries)
A maximum cash discount of 2 percent.

These bulletins explained that the roasted coffee figures were issued to aid roasters who did not have adequate cost data in avoiding violation of the code. They also stated that any price published, or sale made, which did not include these cost figures, plus other items mentioned, would be considered prima facie evidence of violation of the code. (**)

There were a number of objections registered against the various provisions of the cost formula. Standard Brands, Inc., contended that due to its method of distribution (direct to retailer as a perishable product), the application of the replacement cost element placed its coffee, when sold to the consumer, in competition with coffee roasted and sold to retailers at prices prevailing two to four months prior to the date of the sale. This was due to the fact that roasters who did not handle their coffee as a perishable product could, and did, "load" the retailer when a rise in price was about to become effective. The contention was also made that the formula was in violation of the code in that, instead of a roaster's "own individual cost" being used, a number of arbitrary factors were introduced. It objected particularly

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(*) Memorandum from Geo. V. Haddock of Consumers Advisory Board to Walter White Deputy, dated March 15, 1934 and
Memorandum Walter White to Riley, dated March 19, 1934.

(**) Letter dated August 22, 1934 to Geo. E. Stanley, Deputy Administrator, signed by J. Rosenthal for the Coffee Industry Committee (Deputy files)

to Note 4, which provided for the allocation of general costs in proportion to dollar sales of coffee to total dollar volume of sales, claiming that such an allocation did not even approximate the actual facts in their particular case. The deletion of "such wide variables as Selling Expense, Advertising, and General Expense" was suggested. The opinion was voiced that it was "impossible to make such an all-inclusive cost system fairly applicable to the large numer of units in an industry having a large number of major variations in practice." (*)

The charge was also made that the formula was used as a medium to fix prices. Several letters were sent to the Code Authority from the Deputy's office on this question. From the NRA files it appears that the Code Authority discontinued the issuance of suggested "Roasted Coffee Costs" November 21, 1934. (**)

The H. P. Coffee Company, St. Louis, Missouri, requested that it be allowed a differential of 1½ cents below the general price level of competition. It contended that, because it sold solely by mail, such a differential was necessary to overcome the advantages of direct personal contact with the customer enjoyed by firms employing traveling salesmen. It was conceded that the H. P. Coffee Company could reflect any actual savings due to its method of operation, but it was ruled that no guarantee could be given that its prices would not be met by a competitor.

The trade association, in its bulletin of October 8, 1934, stated: "the great majority of complaints of code violations submitted by members of the industry prove to be unfounded and based on erroneous information or understanding." In a memorandum to the industry, June 6, 1935, the following statement appears, "Government enforcement was so lamentably weak in this field that practically all of the beneficial results obtained from the two provisions of the code were obtained on the basis of voluntary cooperation."

Of a total of 103 Trade Practice Complaints docketed by State Offices from September 1, 1934, to April 4, 1935, five were for alleged violation of the Destructive Price Cutting provision and 37 for alleged violation of the Selling Below Cost Provision.

There were three outstanding cases referred to the NRA - Standard Brands, Inc., John Wilkins Coffee Company, and the H. P. Coffee Company. Comoliance was secured in the two first cases, but the H. P. Coffee Company case had been turned over to the Litigation Division when the Code expired.

(*) Transcript of Hearings - Standard Brands Case - April 30 and June 12, 1934.

(**) Transcript of Hearings, Standard Brands Case, May 1, 1934-pages 236-237. Statement of Mr. Filers, Attorney for H. P. Coffee Co. at hearing of Complaint against that company.
Letter from Walter White Deputy to R. Barclay Scull Mid-Atlantic Regional Code Authority, Camden, N.J., dated May 4, 1934, referring to letter dated April 27, 1934 addressed to 13 firms by the Regional Code Authority.

The Standard Brands case resulted in the appointment of a sub-committee by the Coffee Industries Committeee, evidently upon the recommendation of the Deputy Administrator, to consider the question of making changes in the formula to correct apparent unfairness and injustice to this company. (*) From the evidence in NRA files, it appears that the John Wilkins Coffee Company was not in violation of the code.

The price provisions of the Coffee Code do not appear to have resulted in any very marked increase in the spread between the price of green coffee and the price of roasted coffee. During 1929 the average difference between the wholesale price of roasted coffee and the price of green coffee (Rio #7, New York), was 33.3 cents. During 1932 this spread was 22.1 cents. During February, 1934, it had declined to a new low of 15.7 cents. The cost formula was approved on March 31, 1934. Subsequent to this approval there was some increase in this spread, but the maximum during 1934 was only 18.7 cents, or substantially less than the 1932 average, and also less than that prevailing at any time prior to December, 1933. (**)

A fuller discussion of price control under the Coffee Code is included in "Price Control in the Coffee Industry" by Harry S. Kanta, Division of Review.

(*) Report of Sub-Committee to Coffee Industry Committee at their meeting held in Chicago, Oct. 22, 23, 1934 (Deputy's Files)

(**) Data from the Statistics Section.

I. LUGGAGE AND FANCY LEATHER GOODS INDUSTRY

The code as originally presented was designed to prohibit sales below cost. Pending approval of cost finding methods and for a period not exceeding four months from the effective date, cost was to be defined as direct material and labor cost, plus 50 per cent of the combined total to cover overhead and sales expenses.

In presenting the proposal, the usual claims were made to the effect that lack of cost knowledge was operating ruinously on the industry. To quote one of the statements made at the public hearing:

> "One of the most ruinous methods of unfair competition prevalent in the industry today is the practice of selling merchandise below cost of production.
>
> "Prices in the industry, during the last four years have been set by manufacturers who used no apparent method of determining their costs with a ruinous effect on the entire industry. While those manufacturers will not represent more than about 10 per cent of the total in the industry, as President Roosevelt said on the introduction of the NIRA into Congress, this 10 per cent sets the standards and conditions for the industry." (*)

R. H. Macy and Company protested against the provision as proposed, claiming that it constituted price fixing.

As finally approved on October 3, 1933, the code prohibited sales below cost, as defined by a uniform system of cost accounting, with no reference to any arbitrary overhead percentage.

The Code Authority presented a cost formula in which cost was defined as direct cost plus 50 per cent for overhead. Material was to be charged in cost at current market price. (**)

This formula was submitted to the Administration on November 22, 1933. On November 25 the Deputy Administrator presented the cost accounting system to the Research and Planning Division. On December 4, Dr. H. F. Taggart of the Research and Planning Division in a memorandum addressed to Deputy Administrator Roscoe C. Cowling commented that the cost formula was a price setting and not a cost finding formula; that it was extremely crude and was totally unsuitable for the purpose of implementing a cost protection clause. (***)

(*) Transcript of Public Hearing, September 8, 1933 - p. 93; NRA files

(**) Standard Cost Method, Luggage and Fancy Leather Goods Industry, 11/22/33, Cost Accounting Files, NRA.

(***) Memorandum, H. F. Taggart Company, Roscoe S. Cowling, Dec. 4, 1933, Cost Accounting Files, NRA.

As a result of a conference between Mr. Taggart and the Code Authority on December 8, 1933, the formula was somewhat revised. The amended formula with reference to overhead percentage, provided in part:

> "-----However no percentage shall be used less than 33-1/3 percent even though the actual budget figures would suggest a lower percentage. Exception may be made to this rule if the member of the industry wishing such exception is prepared, on demand, to submit to an agency of the Code Authority, subject to audit, a budget and basis therefore which will warrant a lower overhead figure ------"(*)

The Deputy Administrator, on December 11, 1933, in a letter addressed to Mr. Kline, Chairman, of the Code Authority, stated in part:

> "----The standard cost system, copy of which is enclosed herewith, has been approved by the Research and Planning Division of the NRA and is hereby approved by the Administration." (**)

On the basis of this letter, the Code Authority assumed that the Administration had formally approved the system and so notified its members.

Reference to Chart VII will reveal that the index of wholesale prices for traveling bags and suit cases commenced rising about the time of the passage of the NRA, increased steadily through 1933, and rose very sharply between December 1933 and January 1934. This last effect was probably attributable, at least in part, to the approval of the formula.

It is doubtful whether there was at any time adequate substantiation of the 33-1/3 per cent overhead mark-up. According to a questionnaire sent out by the Assistant Deputy Administrator, about 22 manufacturers' overhead varied between 8 and 84 percent of their total cost. (It should be noted here that a 33-1/3 per cent mark-up is equivalent to 25 per cent of the total cost). Of the 22 concerns reporting, three revealed overhead percentages below 20 per cent. (***) Consequently, to the extent to which these figures are reliable, the 33-1/3 per cent mark-up, while substantially below the average, was well above the experience of certain concerns.

(*) Standard Cost Formula, 12/11/33, Cost Accounting Files, NRA.

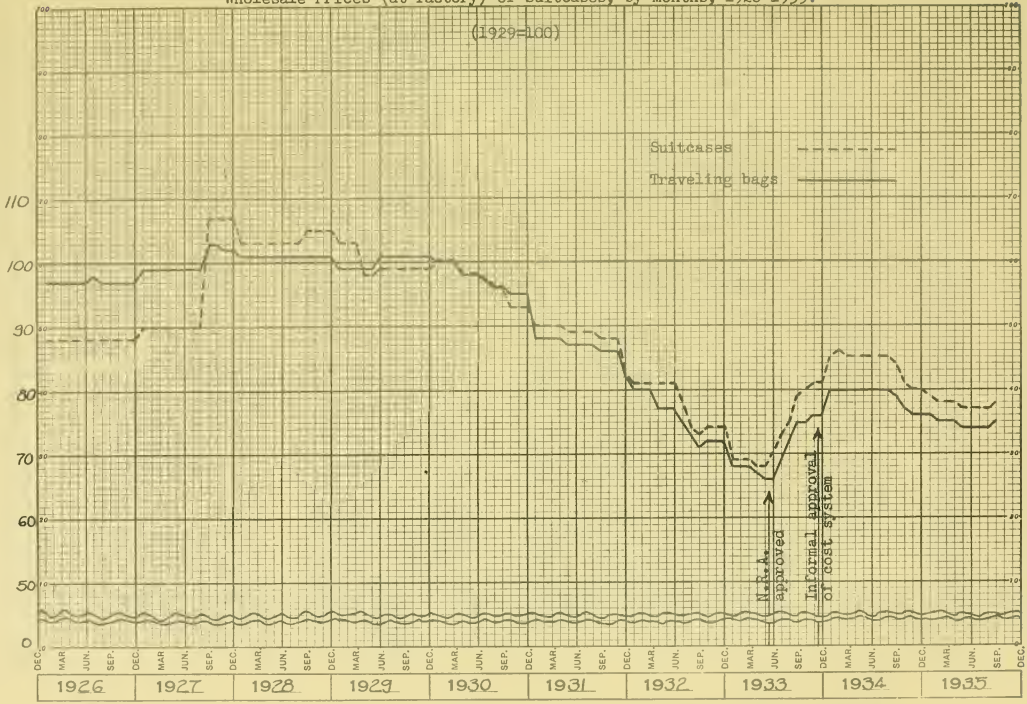
(**) Reference - letter Deputy Administrator Conkling to Chairman of Code Authority, December 11, 1933.

(***) Files of Deputy Administrator; folder, "Standard Cost Formula."

CHART VII

LUGGAGE AND FANCY LEATHER GOODS INDUSTRY

Index of Wholesale Prices (at factory) of Traveling Bags and Index of Wholesale Prices (at factory) of Suitcases, by Months, 1926-1935.



Source: Wholesale price indices of the Bureau of Labor Statistics, shifted to 1929 base.
N.R.A. Division of Review.

Difficulty also arose with reference to the valuation of material at current market price; at least in one case objection was received from an individual industry member. This letter of objection is significant:

"The inclused bulletin refers to a resolution which was adopted by the Code Administrative Committee at their March meeting. This resolution reads as follows:

> 'The materials which are processed under the Code other than the Luggage and Fancy Leather Goods Industry Code, shall be figured in the material cost of the current market price of those materials.'

"We deem this resolution as unjust. We are engaged in the manufacture of Gladstone Bags. In manufacturing these bags we produce our own frames at a cost of $3 per dozen, whereas the present market price on such frames is $7.75 per dozen. We also finish our own leather; the cost of which is $9 per dozen, whereas, the market price on finished leather per dozen Gladstone is $14. Our position with regard to the manufacture of these frames and in the finishing of leather is that both of these items are as much a part of the Gladstone Bag as the straps and handles, and which should not be considered any different with respect to the manufacture of these items and those manufacturers who make their own straps and handles because they can produce these articles cheaper than they can buy them. We are doing likewise with respect to the manufacture of frames and the finishing of leather.

"At the present we sell our finished merchandise at $5.50 each. This price includes a 33-1/3 per cent minimum overhead as required by the approved standard cost formula of the industry. This minimum overhead is in excess of our actual overhead. Should we figure our cost at the current market price of materials as demanded by the resolution, our selling price of this material would be $1.60 on the basis of the standard cost formula. We manufacture 50,000 Gladstone Bags per year, consequently the buying public would be overcharged $55,000 if we were compelled to adhere to the above resolution.

"However, we would not make this $55,000 as a profit; as a matter of fact, we would be driven out of business. At this increased price, our production would fall enormously, and as a result, our cost of production would greatly rise, for we would not produce frames at $3 a dozen, nor could we produce the leather at $9 per dozen, unless we maintain our present quantity of production. In short, the resolution adopted by the Code Administration Committee would drive an efficient manufacturer out of business for the benefit of the inefficient manufacturer, at the expense of the buying public.

"Having thus presented our position to you in this manner, we ask you, Colonel Cowling, to give us a just deal." (*)

(*) Letter from R. E. Rappeport Company, Chicago to Deputy Administrator, March 27, 1934; NRA files.

In reply to this protest, Assistant Deputy Administrator Leigh Ore informed the Rappeport Company that the Administration approved the stand taken by the Code Authority. (*)

In seeking an interpretation of certain features of the formula, the chairman of the Code Authority was informed that the Legal Division did not regard the approval of the Deputy Administrator as having been sufficient. Apparently the first inkling the Code Authority had of this situation was when the Chairman transmitted this intelligence at a meeting held on August 29-30, 1934. (**)

Prior to granting formal approval, NRA insisted on certain changes in the formula. As finally approved on October 25, 1934, (the last mandatory system approved by NRA), the phrase "exception may be made to this rule", (see above), was changed to read "exception shall be made to this rule-----" (***)

The uncertainties surrounding the status of the formula during this period apparently resulted in a breakdown of compliance and moral, if price fluctuations may be taken as a criterion. Chart VII shows a sharp drop in the prices of suitcases and traveling bags between August, 1934, when the validity of the approval was first brought into question, and December, 1934. A further slow decline is evidenced during the early months of 1935, indicating that the belated violation of the cost system had little if any effect.

J. Paper Distributing Trade

The codes for this trade as originally proposed would have covered all wholesale distribution of paper and paper products regardless of whether such distribution constituted a major line or a side line. The code further attempted to control channels of distribution by prohibiting direct sales by manufacturers to retailers.

Effective control over price was to be established by providing that manufacturers were to establish resale price schedules acceptable to the distributors, such schedules to carry a "fair and reasonable profit above the merchandise and operating costs." Where resale prices were not established by manufacturers it provided that merchandise should not be sold" at less than replacement cost, plus cost of distribution - plus reasonable profit on the sale."

(*) Letter, Asst. Dep. Adm. Ore to Rappeport Company, April 3, 1934 Dep. Adm. Files, Protest, L to Z.

(**) Minutes of C.A. Meeting, 8/29-30/34, Deputy's files, Code Authority folder.

(***) Cost Formula, 11/28/34, Cost Accounting Files, NRA

These provisions were readically changed prior to approval. The code was revised to prohibit sales below replacement costs plus a mark-up for actual wages of labor to be fixed by the Administrator. An exception was provided to permit the meeting of competition.

The replacement cost basis was not approved without serious objection from the Consumers' Advisory Board and from the Research and Planning Division. The industry, however, contended that this basis was necessary for the following reasons:

(1) In view of the impossibility of identifying the date of purchase of inventory, replacement cost provided the one basis on which enforcement would be feasible.

(2) It was contended that the prices of paper and paper products had always been subject to violent fluctuations and that these fluctuations had been aggravated by speculation. It was also contended that certain paper merchants had the habit of buying paper far in excess of their own customers' requirements with the object of attempting to dispose of it among the customers of their competitors. It was further claimed that this speculation by distributors tended to aggravate fluctuations in the activity of manufacturers, causing excessive stimulation of production which would be followed by a complete slump when inventories were piled up. (*)

The objections of the Consumers' Advisory Board and of the Research and Planning Division were overruled and the code was approved on December 23, 1933. The loss limitation provision was to remain in effect only until July 1, 1934, unless renewed by further order.

On February 21, 1934, the Code Authority submitted to NRA a proposed schedule for allowance of actual wages of labor together with data purporting to justify their demands. The percentages proposed were based on the results of a special cost survey conducted by the Business Research Corporation covering the August and September, 1933, business of a group of paper distributors selected by the Code Authority. Effort was made to insure that the selection would be as representative of the trade as possible. (**)

The data submitted were considered inadequate by the Research and Planning Division and the Code Authority was requested to make another cost survey covering the first quarter of 1934. On the basis of this later survey the Research and Planning Division submitted recommendations specifying a minimum mark-up. In submitting this recommendation it was

(*) See letter of January 15, 1935 from Code Authority to Administrator in support of application for extension of provisons of Sec. 4, Art. VIII; files of Deputy Administrator.

(**) See statement of O. F. Marquardt, transcript of public hearing January 15, 1935.

reiterated that the cost data submitted appeared inadequate. It was recommended that approval be granted only for the remainder of the year 1934 and that further data should be secured prior to any extension.

On June 7, 1934, the schedules of mark-ups to cover wages as recommended by the Research and Planning Division, was officially approved by Administrative Order No. 176-6, to remain in effect until December 31, 1934. The cost provision of the code, however, was to terminate on July 1, 1934, unless renewed. While in favor of granting an extension to October 1, 1934, the Assistant Administrator for Policy recommended a stay of the wage allowances, which were, thereupon, suspended, leaving in effect only the replacement cost of materials. Upon further consideration, the Assistant Administrator reversed his position and, on July 11, 1934, the wage allowances were reinstated to expire October 1, 1934.

On October 2, 1934, both the replacement cost provision of the code and the wage allowances were extended until January 31, 1935.

Public hearings had been held prior to each of the renewals, and a hearing was again held on January 15, 1935.

Opposition developed at these hearings from the wholesale grocers, who contended that the labor mark-up, as applied to the paper products they handled, was in excess of their actual costs. The Code Authority stressed the need of controlling the competition of these side line merchants, alleging that they were prone to use their paper items as loss leaders, and requested continued protection for the full line merchant. (*)

The Deputy and Division Administrators strongly urged extension beyond January 31, 1935, but were opposed by the Consumers' Advisory Board and the Research and Planning Division. The NIRB thereupon referred the question to the Advisory Council which rendered an adverse report. (**) Extension beyond January 31 was consequently denied and, on that date, the effectiveness of the provision terminated.

The report of the Advisory Council did not pass final judgment on the issue, in which the wholesale grocer-paper distributor question bulked largest, - but opposed further extension pending determination of policy by the Board upon the general issues involved.

The decision of the Advisory Council, is quoted is part:

"It should be added nevertheless that the Council does not consider the issue of a wholesale mark-up to be entirely fore-

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(*) Transcript of public hearing, Jan. 15, 1935; also memorandum in Deputy's files dated Jan. 23, 1935, from Assistant Deputy Administrator, re inclusion of wholesale grocers.

(**) Deputy Administrator's files; memorandum Feb. 15, 1935 from Advisory Council to National Industrial Recovery Board.

closed by either the decisive language of the above code paragraph or the reasoning against continuation of the mark-up at this time. It is recognized that all of the evidence concerning both the justification and dangers of such mark-ups is not in and that the current hearings may still reveal special situations in which action along these lines may be found desirable. At the moment, however, the present and potential difficulties attending this particular effort to stabilize prices in the paper trade, seem to the Council to outweigh the possible benefits. As it is likely to be still some time before new policy is actually set in motion, and as the earlier action of the Council in declaring against wholesale differentials raises a question of consistency, there does not seem to be much to gain by giving this provision another temporary and inconclusive lease on life.

"Recommendations: It is therefore recommended that the application for extension of Section 4 of Article VIII not be granted at this time but that judgment be reserved until after the hearing and general determination of policy by the Board on the general issues involved." (*)

According to a report prepared by Miss Enid Baird of the Consumers' Advisory Board for the Hearings on Price Changes, held on January 9 and 10, 1934, thirty complaints had been received by N.R.A. from retailers and converters of papers. (**) These complaints made specific charges of excessive price increases and of monopolistic collusion among manufacturers and distributors. Although the complaints were filed prior to the effective date of the Paper Distributing Code (December 23, 1933), it seems reasonable to presume a connection between the activities complained of and the expectation on the part of the manufacturers and distributors that their Codes would contain price control provisions. (The Paper and Pulp Code had already been approved on November 27 and contained mandatory uniform cost accounting and open price filing provisions.)

The complainants charged that the prices which they were forced to pay had increased during the preceding three months form 25 per cent to 150 per cent on individual items. These charges were substantiated by copies of bids and price lists. The charges of collusion were supported by copies of identical bids and joint price lists from various distributors and by excerpts of letters from distributors, of which the following is a good example:

"November 2, 1933. So far as collusion is concerned, there is no necessity for practicing it. I mark our merchandise up along lines suggested by the National Paper Trade Association on all items on which the mills do not make suggested retail prices."

(*) Decision #173, Advisory Council, Feb. 15, 1935.

(**) Transcript of Price Hearings, Jan. 9, 10, 11, 1935. Supplement, p. 360.

The complaints from wholesale grocers consisted of protests against the inclusion of their sales of paper under the jurisdiction of the Paper Distributing Code. Specifically, they objected to being forced to operate, as regarded their paper sales, on the bsis of a 9 per cent markup. Their own Code provided a markup of 2 per cent and they claimed ability to sell paper at a profit on a markup of less than 9 per cent. They contended, moreover, that this markup made it impossible for their retial customers to compete with the chain store and cooperative organizations which bought direct from the mills.

On January 15, 1935, a Public Hearing was held on the proposed extenstion of the minimum price provision in the Paper Distributing Code. Up to that time, about 60 complaints had been received by N.R.A. from wholesale grocers associations and individual concerns. To these were added, at the Hearing, protests from other associations and individual concerns and also from associations of retail grocers and of grocery manufacturers.

According to the testimony of wholesale grocers and their representatives at the Public Hearing on January 15, 1935, many of these concerns were operating in complete disregard of the mandatory markup of 9 per cent on paper items.

At the Public Hearing on December 27, 1934, and the Post Hearing Conference on January 4, 1935, testimony was presented by representatives of the Paper Distributing Code Authority to the effect that violations of the minimum price provisions were widespread among super-jobbers and sub-jobbers. The super-jobbers claimed exemption from the replacement cost plus markup requirement under the clause exempting sales between wholesalers, although, according to the Code, such sales were exempted only upon the approval of the Code Authority.

On these same occasions, further testimony was presented by the Code Authority to the effect that certain paper merchants were circumventing the Code provisions by means of subterfuge. It was alleged that these dealers claimed to be acting as mill agents in order to secure the agents' commission of from 3 per cent to 5 per cent but, having received these commissions from the mills, proceeded to distribute their purchases in direct competition with the ordinary distributors. The agents' commissions enabled them to undersell all the ordinary distributors and even the mills themselves, since the latter were not permitted to sell below their filed prices. The inference was that certain mills connived with these agents as a means of circumventing the provisions of their own Codes.

According to the testimony of A. W. Leslie, Chairman of the Code Authority, at the Hearing on Price Provisions, January 9, 1935, at least 500 formal complaints were handled by the Regional Committee during 1934, and a great many more were adjusted by Trading Area Sub-Committee without hearings.

Brief summaries of the two most important cases which came to the attention of the Litigation Division will serve to exemplify the general nature of compliance problems and the procedure followed in dealing with them.

1. Midwest Paper Company.

Early in October, 1934, the Midwest Paper Company of Chicago, Illinois, was charged by the Paper Distributing Code Authority with various Code violations including violations of the minimum price provision. (*) This concern did an annual business of between $1,000,000 and $2,000,000 and was important both locally and nationally.

According to the Litigation Division digest of the case, sales below replacement cost were "suspected". The Code Authority requested permission to examine the Company's books, but permission was refused. A hearing was held by the Code Authority, at which time the respondent again refused permission to examine its books.

The case was referred by the Code Authority to the State Compliance Director, whose agent requested access to respondent's books. Access was denied. Thereupon, the State Compliance Director summoned respondent to a hearing. Respondent failed to appear.

The case was referred by the State Compliance Director to the Litigation Division, which referred it to an Assistant U. S. Attorney. Various actions and counter-actions were instituted, with the net result that the respondent was left free to continue its disregard of the Code.

2. Nemrow Brothers, Inc.

In June, 1934, Nemrow Bros. Inc. of Boston, Mass. was charged by the Paper Distributing Code Authority with selling below replacement cost and with failure to make reports to the Regional Committee. (**) The annual sales volume of this concern was not disclosed, but it was said to be large, and the company was known as an important factor in the Trade both locally and nationally.

Numerous conferences took place between the Code Authority and the respondent, in an attempt to secure an adjustment. A formal hearing was held by the Code Authority at which there was considerable controversy as to the meaning of "replacement cost". It appeared that all sales made by the respondent were at prices in excess of his invoice cost. The Code Authority found respondent in violation of the Code and "required" respondent to make "equitable contribution" of $175.00 to defray expenses of the hearing and investigation. Respondent appealed and the case was referred to the Compliance Division.

On November 26, 1934, six months after the filing of the complaint, a consent decree was entered in the Federal District Court enjoining future violations.

(*) Litigation Division files; Docket No. 6-9

(**) Litigation Division files; Docket No. 1-14

The Chairman of the Code Authority testified at the Hearing on January 9, 1935, that, in addition to the improvement of labor conditions in the Trade, the following benefits had accrued from the minimum price provisions of the Paper Distributing Code. (*)

(1) Speculative stocks decreased an estimated 20 per cent (dollar value).

(2) The liquidation was orderly and, except in cases of Code violations, did not disturb manufacturers' or distributors markets.

(3) Conservative merchants were encouraged to build up their stocks, because of more stable market conditions and less danger from speculative buyers.

(4) Small operating profits replaced losses.

(5) Manufacturers' operations levelled off and improved materially

(6) Average prices for paper and paper products advanced less than 10 per cent from the low point of the depression, stability being the distinguishing characteristic of the price level.

It is pertinent to note that the National Paper Trade Association submitted to the Federal Trade Commission a voluntary agreement including a prohibition against selling below cost.

(*) Statement of A. F. Chamberlain, Transcript of Price Hearing, January 9/35.

VI. SUMMARY

It is apparent, from a review of these cases, that it was the constant aim of the respective Code Authorities to turn provisions prohibiting sales below cost into rigid price fixing instruments. But if the goal of industry was clear and consistent throughout, NRA policy was slow in developing. At first broad grants of power were allowed, and codes with highly restrictive price provisions approved. During this same period administrative officials were prone to extend unauthorized approval to cost systems and price schedules designed to effectuate these provisions.

Gradually NRA policy shifted, and increasing reluctance either to approve provisions of this character or to implement those already approved was manifested. The refusal to approve all but a small proportion of mandatory cost systems provided for in the codes has been noted previously. In the Fire Extinguishing Code the schedule of lowest representative costs, once informally approved by the Assistant Deputy Administrator, was denied formal approval. In the Malleable Iron Industry an effort was made to draw the teeth of the "fair and reasonable" costs provision by approving it subject to the proviso that any member could sell down to his own individual costs.

As time went on NRA requirements became increasingly rigid. The Rubber Tire Manufacturing Industry was categorically denied approval of a cost system based on replacement cost of raw material. Systems and schedules already approved were allowed to lapse, for one reason or another, in several cases on recommendation of the Advisory Council.

In addition to the direct effect which these changes of policy had, their indirect effect on industry morale was substantial. In many cases the issuance of Office Memorandum #228 was followed by a marked letdown in compliance. Administrative reluctance to press charges against violators had a similar effect.

Perhaps the best commentary on these shifts in policy may be derived from the following time table for a few industries:

Paint, Varnish and Lacquer Manufacturing Industry.

Code approved - 10/31/33
Processing costs approved - 5/11/34
Processing costs reapproved - 12/7/34
Processing costs - approving amendment to previous approval - 12/22/34
Processing costs - further amendment to previous approval - 12/28/34
Processing costs allowed to lapse - 1/25/34
Sales below cost stayed - 4/27/35

Paper Distributing Trade.

Code approved - 12/23/33
Labor markups approved - 6/7/34
Labor markups stayed - 6/20/34
Markups reinstated - 7/11/34
Markups allowed to lapse - 1/31/35

Fire Extinguishing Appliance Manufacturing Industry

Code approved - 11/4/33
Representative costs "approved" by Asst. Deputy - 12/12/33
Code Authority notified representative costs must await approval of cost system - June, 1934

Federal Trade Commission files complaint - 4/4/35

Luggage and Fancy Leather Goods Manufacturing Industry

Code approved - 10/3/33
Formula "approved" by Deputy - 12/11/33
Code Authority informed approval invalid - August, 1934
Formula officially approved - 10/25/34

Malleable Iron Industry

Code approved - 11/27/33
Fair and reasonable costs approved, but with proviso modifying effect - 4/25/34

Resentment against NRA was engendered by the uncertainty of its policy. It was alleged that code provisions represented a mutual compact between industry and NRA and that unilateral abrogation by NRA was unwarranted. There is little question, however, that it would have been disastrous to permit some, at least, of the provisions contained in the earlier codes, as approved to become effective.

The Fire Extinguishing Appliance Manufacturing Code with its prohibition of sales below the lowest cost of a representative member may be cited as an example. The term representative member was defined as one "who manufactures within his own plant arepresentative line of the products of the Industry, who maintains research and development departments for improvement in the arts of fire extinguishment, and who through educational publicity and sales promotion broadens the market and develops business for all members of the industry." (*) Lower cost producers were to be ruled out of their advantage by definition. They could compete only on a price level based upon the costs of those who considered themselves "representative." The prestige advantage enjoyed by the dominant group was ignored. The minority were not to be permitted to compensate for their lack in this regard through lower prices.

(*) Fire Extinguishing Appliance Code, Article VI, Section 2(e).

Had this provision been permitted to remain in effect, and could it have been enforced, the members of the dominant group would have been granted an overwhelming competitive advantage. In this case the virtual nullification of the code provision was the alternative to such an eventuality.

But, turning from these later attempts by NRA to reverse or modify the effects of its earlier grants, any review of these cost protection clauses in operation leaves one inescapable conclusion. On the basis of this sample, at least, industry was far more successful in turning the no selling below cost principle into a relatively rigid minimum price fixing instrument than NRA was in maintaining flexibility. There was practically no case in which the cost accounting system was devoid of arbitrary elements. In practically every instance the yardstick had been so graduated as to establish a price floor definitely higher than the cost of the most efficient producer. Carrying the design a step farther, many of the Code Authorities "recommended" prices to members, usually with a more or less explicit threat that sales below the suggested levels would be proceeded against.

In the screw Machine Products and Limestone Industries, prices, instead of being fixed for the product were fixed per operation, a device more suitable to the character of the industries but differing in no essential principle.

At the risk of reiteration, then, it is evident that cost protection, in practice, established a floor price level no less definitely than direct or emergency minimum price fixing; and that this floor was, in general, well above the cost level of the most efficient producer. Furthermore, when fixed or emergency minima were established, their level was clearly specified. Where under cost protection, the price floor was not explicitly defined by indefinite, it was impossible for NRA to obtain any adequate information as to its fairness or effect.

In summary, cost protection did not turn out to be a very satisfactory administrative instrument. The anticipated flexibility was not achieved. The problem of enforcement was complicated by the necessity of examining the books of suspected violators, permission for which was granted grudgingly if at all. The constant conflict of motive between NRA and the Code Authorities was not conducive to smooth administration.

CHAPTER IX

CONCLUSIONS

I. PURPOSE OF MINIMUM PRICE REGULATION

Minimum price regulation under N.R.A. Codes of Fair Competition represented an effort to remedy actual or alleged dislocations of the price structure of individual industries or specific products.

In general these price problems were merely surface manifestations, reflecting the general effects of the depression, aggravated in individual industries by specific maladjustments, related usually to the condition of their markets, the character of their membership, the methods through which their products were distributed, or the extent to which consumers were able to exert control over their price structures.

Furthermore these maladjustments may have been intensified by a malady far more deep seated, a basic disorder of the market arising from the substitution of rigid for flexible elements in our economy, of imperfect competition and administered prices for free competition and market prices.

Discussion of the possibility of remedy for this basic disorder is outside the scope of this study. Minimum price regulation was not directed at this fundamental economic problem, nor even at the more basic difficulties which affected specific industries and expressed themselves in a price level unsatisfactory to the bulk of their memberships. It was rather an attack on the obvious and most superficial symptom of these underlying factors on the price level itself.

II. EFFECTIVENESS OF MINIMUM PRICE REGULATION

In some cases these efforts to ameliorate conditions by limiting price competition resulted in complete failure. In some a greater or lesser degree of success was attained; success, that is, from the standpoint of the problem attacked. No attempt has been made to appraise success or failure in a broader economic or social sense.

A. Factors Making for Failure.

Considering the failures first, the following generalizations appear warranted:

(1) Availability of Substitutes.

Where the demand for an industry's product is closely conditioned by the availability of substitutes, or of identical products manufactured by other industries, minimum price regulation is unlikely to be successful. The most extreme example of this situation is in the Hardwood Distillation Industry, which faces extra-industrial competition on every front. The price of all of its products - methanol, calcium acetate and charcoal - are to a great extent out of its

control. Here price regulation was foredoomed to failure.

In the Lumber and Timber Products Industry the competition of substitutes is somewhat less immediate but still vitally important. Steel and concrete possess many advantages over wood as construction materials in many departments of the field. One of the principal factors governing the demand for lumber in construction is, therefore, the saving in cost it can show over other materials. Consequently, any sharp decrease in the price differential between lumber and other building materials, such as occurred during the early months of the code, will discourage the use of wood to an appreciable extent.

Similar considerations may hold for such other uses of lumber as furniture. It is probable that any benefit that might have been derived from the price increases under the code was canceled at least in part by their inhibiting effect on demand. This may have been an important factor in creating the general dissatisfaction with the code price provisions which culminated in the petition for their repeal.

(2) Price Control Designed to Restrict an Industry Faction

In many cases price control was sought by one group in an industry primarily in an attempt to circumscribe the activities of a competing group. These efforts failed almost uniformly, either because the faction at which they were directed refused to cooperate, or because N.R.A. refused its backing.

In the Cleaning and Dyeing Trade, price control was intended to restrain the activities of the "cash and carry" cleaners. These felt that their business life would be imperilled by compliance with the high price level established, especially since no differential was provided for their means of operation, and simply refused to comply.

In two cases, Plumbing Fixtures and Retail Tire, mail order houses and interests affiliated with them were the target, and in both these industries they succeeded in nullifying the effect of the price provisions. To a lesser degree, the same was true of the Furniture Industry. In the Canvas Goods Industry an anomalous situation arose. The retail group were bound by the price provisions but the wholesale group were not, and enforcement against the thousands of handcraft shops was out of the question. As a result, prices were inapplicable to the very elements they were designed to control, and success was out of the question.

In the Commercial Printing Industry, while the record is somewhat confused, the attempt to regulate the "hall-bedroom printers" probably met with little success. In the Paper Distributing Trade the price provisions represented an attempt by the orthodox wholesalers to maintain their position against sub-jobbers, super-jobbers, del credere agents and side-line merchants such as the wholesale grocers. The evidence indicates that these groups did not, in general, comply with the provisions, and that N.R.A. finally decided that the propriety of exercising control of this nature was subject to question and rescinded its approval.

In two codes, Fire Extinguishing Appliances and Wood Cased Lead Pencil, the price provisions were drawn with the direct view to restoring to groups long dominant in these industries advantages they felt slipping from their grasp, but N.R.A., despite its original approval of these codes, declined to grant approval to the schedules necessary to effectuate these provisions.

(3) Multiplicity of Units and Products, Internal Disorganization.

Where an industry was composed of a large number of units, many of them small, producing a wide variety of unstandardized items, the chances of success are not propitious. In the Lumber and Timber Products Industry, the Cleaning and Dyeing Trade, the Canvas Goods Industry, and the Commercial Printing Industry these factors contributed to insuring failure. In these cases success would have been improbable in any case due to the difficulties previously enumerated. In the three Producers' Service Trades, however, Fur Dressing, Throwing, and Waste Paper, the primary cause of lack of success was probably just this internal disorganization. Substitutes were not a problem, and there was no clear internal cleavage. Price control was designed to permit these industries better to resist the pressure that consuming interests were able to exert over prices through such practices as bid shopping, in the first two of these industries, and through the control of a captive plant in the Waste Paper Trade. In each case the attempt to organize the industry to resist this pressure failed. In the Fur Dressing and Fur Dyeing Industry this failure ensued under little, if any, outside opposition. In the Throwing and Waste Paper Industries, however, consumers apparently took an active part to insure collapse. It is significant that similar attempts to resist buying pressure met with better success in three other industries in which industry morale was better or consumers less resistant.

(4) Summary

In summary, failure ensued when:

(a) Product demand was very responsive to price changes due to the availability of substitutes.

(b) Price control was designed to circumscribe the activities of a faction of the industry, and that faction actively resisted such efforts.

(c) There was an attempt to resist the pressure buyers were able to exert on the price structure, and the industry was too disorganized to maintain its position in the face of these consuming interests.

(d) Multiplicity of units or products greatly lessened the chances of success.

B. Cases of Relative Success.

Turning now to those cases in which a greater or lesser degree of success in securing the results desired by industry was

achieved, the following groupings appear justified:

(1) Restriction of Price Wars, Deliberately Initiated by One or Two Industry Members.

In two cases, the Cast Iron Soil Pipe and the Agricultural Insecticide Industries, price control under the emergency was aimed at stopping a price war initiated by one or two members of these industries. In each case N.R.A. established a floor price, for a limited period, at a very low level. In the Cast Iron Soil Pipe Industry the price established was merely sufficient to cover the direct costs of producers located in the area in which labor rates were lowest.) In both of these codes price control appears to have been distinctly successful. Not only was the price war arrested during the life of the emergency, but there was no resumption upon its termination.

(2) Provisions Designed to Resist Consumer Pressure.

In three industries, (Limestone, Malleable Iron, and Screw Machine Products), cost protection was designed to permit the industry to resist more successfully the pressure exerted on prices by buyers of its products. (All three of these industries are Producers' Goods Industries without independent demand). In each of these cases it is probable that a moderate degree of success was achieved. In this respect these codes stand out in sharp contrast to experience with the Producers' Service Trades, in which failure resulted due to greater resistance by consumers, to internal disorganization and possibly less efficient direction.

Unfortunately, no objective criteria are available for any of these industries. The inference that price control was successful in the Screw Machine Products Industry is based on the few expressions of opinion available in NRA files and on very limited field contacts. There appear to have been virtually no complaints from industry members or from consumers, presumably because price increases were kept within reasonable bounds. It may be that capable administration by the Code Authority was an important factor. It is especially interesting in the case of the Screw Machine Products Industry that there were no ancillary devices, such as bid filing, to which some of the effect of the provision could otherwise be attributed. The instilling of cost consciousness, entirely apart from prohibition against sales below cost, may have been an important contributing factor. (Whether or not individual members are either wise or justified in basing price quotations on a cost formula is beside the question).

In the Malleable Iron and Limestone Industries the record is not equally clear. At first, in any case, the cost provisions in these industries appear to have had an appreciable effect on prices. In the Limestone Industry the cost provisions and bid filing worked together. The latter device insured publicity and the Code Authority in many cases required the rejection of bids deemed non-compliant with the price provisions. The fact that the Code Authority of the Limestone Industry required and secured upward revision of bids in a number

of instances is an indication that the price provisions were, to a degree, effective, an impression bolstered by the statements made by the former counsel of the Code Authority in an interview. With reference to the Malleable Iron Industry expressions of opinion contained in NRA files point to the strong probability that the cost provisions succeeded in raising prices.

Insofar as any lasting effect is concerned, there is no information available with reference to the Malleable Iron Industry. In the Limestone Industry, however, at least so far as the New York Metropolitan area is concerned, conditions have become extremely unsatisfactory to the industry, with bid shopping and the use of kickback again the rule.

Serious administrative difficulties were encountered in both these last cases, due primarily to attempts by the respective Code Authorities to exercise a greater control over prices than the code provisions warranted.

(3) The Loss Leader

In the Retail Tobacco Trade the problem was occasioned by the use of tobacco products as loss leaders. The concerns which indulged in this practice were apparently willing to abide by the prices established, presumably because of their dependence upon public goodwill. At any rate during its life minimum price regulation achieved the effect intended. In this instance, however, the moment price control ended conditions reverted to their previous status.

(4) Provisions Designed to Aid Small Units.

In the Coffee Industry the price provisions were probably intended primarily to permit the smaller units to compete on more favorable terms with the very large. While there is no direct evidence on this point, the inference appears warranted on the basis of the evidence. It is likely that this intent was to some degree achieved, but this conclusion is only advanced tentatively.

(5) Stimulus to Solution by Industry.

In the Ice Industry the record varies. Here there was a combination of excess capacity, loss of markets to substitutes, ease of entry, and problems connected with distribution. In two cases a declaration of emergency was ineffective. In one case, however, (Dallas, Texas) industry members utilized the period of time afforded to work out a solution of their difficulties based on allocation of production. Apparently this scheme has, to-date, worked to the satisfaction of industry members.

(6) Industries with no Special Aggravating Maladjustments.

In the Fertilizer Industry and the Luggage and Fancy Leather Goods Industry, there appear to have been no very serious specific difficulties contributing to price unsettlement, other than those inherent in the falling off of demand during the depression. In

both these cases price regulation appears to have resulted in sharp price increases. In each industry, furthermore, the price level declined appreciably as soon as the effectiveness of the price provisions was terminated, or their legality questioned. It is significant that in both the Luggage and Fertilizer Industries there were complaints that the price increases were unreasonable.

Whether experience in the Paint, Varnish and Lacquer Industry should be classed as successful is uncertain. It is not possible to determine with any degree of assurance the effect of minimum price regulation in this case. Prices remained stable, within a fairly narrow range, throughout the code period, but whether because of, or in spite of, the price provisions is uncertain. Furthermore, at no time were all the codal price provisions effective simultaneously.

(7) Summary.

Price control was apparently effective in:

(a) Arresting deliberately initiated price wars in two instances. (Agricultural Insecticide and Cast Iron Soil Pipe.)

(b) Permitting three industries better to resist consumer pressure. (Limestone, Malleable Iron, Screw Machine Products.)

(c) Curbing the use of the loss leader. (Retail Tobacco.)

(d) Possibly improving the position of small units in one industry. (Coffee.)

(e) Aiding an industry (Ice) to devise a means of production control in one local area, the results of which are claimed to have been beneficial to its members.

(f) Permitting two industries which were confronted with no special aggravating problems to raise their prices to levels that could only be maintained artificially. In both these cases this effect occasioned complaint. (Luggage, Fertilizer.)

III. COMPARISON OF DEVICES.

A. Basic Simularities.

The preceding discussion of effectiveness had designedly omitted any reference to the devices in each case. Success or failure was conditioned primarily by the problem, not by the method. Price floors were set in each case, under cost protection no less surely than under direct or emergency price fixing. The emergency, although limited in theory to a definite period of time, was capable of indefinite extension, with the result that in at least two cases - Lumber and Tobacco - the time limitation was purely nominal.

B. Differences.

Granting these fundamental similarities, certain differences may be discerned.

(1) Direct Minimum Price Fixing.

The broad grant of power to Code Authorities under this device led, at least in the Lumber and Cleaning and Dyeing Industries, to serious administrative difficulties. The degree of control N.R.A. was in position to exercise was not adequate. This may not have been inherent in the principle of the device, but in practice, at least in the Lumber and Timber Products Industry, N.R.A. had no specific power of review, and in the Cleaning and Dyeing Trade it was unable to force price revisions. This was clearly revealed in both these industries when attempts were made by N.R.A. to investigate or modify the prices established. In the Cleaning and Dyeing Trade the impasse resulting from the refusal of the Code Authority to concur in a general revision of the price schedules was an important factor in bringing about the termination of the experiment. In the Lumber Industry, not until N.R.A. substituted the emergency device for direct price fixing was there any possibility of adequate supervision.

(2) Cost Protection.

The primary distinction between cost protection and either direct or emergency price control is that, instead of definitely stating what the minimum price is to be, a formula is provided for its calculation. In some industries, such as Limestone and Screw Machine Products, it would be impossible to develope a price schedule covering all possible items. Cost protection, in effect, establishes a minimum price per operation in these cases. The generally unsatisfactory nature of NRA experience with no-sales-below-cost provisions has been described in the preceding chapter.

Cost protection as applied to distribution codes may be in a somewhat different category. Price control in these cases generally centered about prohibiting sales below invoice cost either with or without specified mark-up, and was usually designed to inhibit loss leader selling. In some of the wholesale codes the purpose was to stabilize distributive channels. It is probable that the devices was relatively well adapted for application in these cases.

(3) The Emergency.

N. R. A. was able to exercise a far greater degree of control over the determination of the price floor under the emergency than under either direct price fixing or cost protection. Prices were usually set at a lower level than would result from a cost formula. Automatic review prior to extension helped to guard against abuse of the device and made possible the termination of its use when the need for it could no longer be demonstrated. Enforcement was to some degree simpler. There seems, therefore, little advantage in most cases in establishing a price floor indirectly through cost protection rather than clearly and and specifically and for a limited period under the emergency.

On the other hand, the emergency does not appear to have been best suited to deal with such permanent problems as loss leader selling. One other disadvantage was revealed by the experience in the Waste Paper Trade. In this case the very fact that the emergency was temporary in nature furnished an incentive to the group at which it was directed to avoid purchases and thereby defeat its purpose.

IV. SUMMARY

This study has been concerned to appraise the various minimum price devices used under N.R.A. as solutions of the problems at which they were directed.

It has been demonstrated that in certain cases they achieved a degree of effectiveness, and in others were more or less total failures. Failure or success was, apparently, not fortuitous, but might to a large degree have been predicted from the nature of the difficulty present and the character of the industry to which it was applied. In certain cases minimum price regulations is almost foredoomed to failure, in others its application may result in a definite improvement in the position of an industry, or of certain industry members.

The relative merits of the various devices used has also been examined.

No attempt has been made here to consider the wider social and economic implications of minimum price regulation. The arguments against any interference by government with the price mechanism are many and serious, and have been frequently reiterated. Whether, under conditions of grave emergency, such intervention is justified, and the extent to which it may go, are questions of public policy beyond the scope of this report.

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APPENDIX I

METHODS OF INVESTIGATION

The first problem confronting the Minimum Price Unit was the selection of industries most appropriate for this limited study. A complete list of all codes in which minimum price regulations had been operative was obtained from information contained in the Post Code Analysis series releases, and from information supplied by the Cost and Accounting Unit as to approved cost accounting systems.

In selecting the industries for study the major aim was to insure a representative selection as to types of industry, types of problems, and types of pricing devices employed. Consideration of the limited time and personnel allotted to the study and the availability of information were also important in making the final industry selections.

Information relating to sixteen of the industries was compiled almost entirely by members of the Minimum Price Unit. The aim in each case was to disclose:-

1. The underlying factors leading to price unsettlement in each industry.

2. The manner in which the specific pricing device was formulated and the considerations weighed during its formulation.

3. The experience with the device in actual operation.

The primary source of information in each of these cases was the records of N.R.A. All material available in the files pertaining to these industries was carefully examined and all data relevant to the problem extracted.

With respect to four industries, this preliminary file survey was conducted by other units of the Trade Practice Studies Section. In seven of the industries, primary reliance was placed upon industry studies made by the Industry Studies Section.

In addition to the above, the following sources of information were used:-

1. Statistical data were obtained primarily from the Census Bureau and the Bureau of Labor Statistics reports. In most cases the actual compilation of this material was undertaken by the Statistical Section.

2. Pertinent information relating to these industries was secured from other Government Departments, including especially the Federal Trade Commission and the Tariff Commission.

5. Information was extracted from periodicals and other similar published and unpublished sources. In a few cases it was possible to supplement the information so obtained from the above sources by a field survey - through which contact was sought with individuals who had been actively connected with former code administration, such as Code Authority secretaries, and also with representative members of the industry.

Examination was made of the records of general price hearings conducted during January, 1935, to determine any important facts therein disclosed which were pertinent to the study. A brief survey was made of the records of the Congressional hearings and debates preceding the enactment of the N.I.R.A., to determine the part the idea of price regulation played in the formulation of the Act.

From information thus secured a summary report was prepared by the members of the Unit for each individual industry, covering the nature of the problem; the considerations involved in the formulation of the code and of the code price provisions; the actual operation of these provisions; and, where possible, the effect of the lapse of these provisions.

The present report presents an evaluation of the problem as a whole, based on these individual studies.

APPENDIX II

PROBLEMS FACED BY SPECIFIC INDUSTRIES

I. PURPOSE

This Appendix is designed to present in greater detail than was possible in the body of the report an analysis of the immediate difficulties confronting the industries covered in the study. It was the reflection of these difficulties in the price levels of the products or services of each of these industries which occasioned their respective pleas for the limitation of price competition.

II. LUMBER AND TIMBER PRODUCTS INDUSTRY

The Lumber and Timber Products Industry as defined in its Code of Fair Competition covered the production not only of rough logs, poles and piling, but also semi-fabricated products such as sawed lumber, shingles, flooring, veneer, etc., and some finished products such as sawed boxes, crates and containers.

The extent of the industry and a statistical picture of its recent trends are revealed by the following table:

TABLE A I

The Lumber and Timber Products Industry

Salient Statistics

Year	Number Of Estab.1/	Production ft. B.M.	Exports ft. B.M.	Per Capita Consumption ft. B.M.	Dollar Volume (000)2/	Price Index 1929-100	Net income Ret'd (000)
1925	13,968	41,000,000	2,648,000	345	$2,192,023	106.9	3/
1929	18,556	36,886,000	3,364,000	275	1,962,080	100.0	$32,360
1930	2/	26,100,000	2,410,000	210	2/	90.9	72,754 D
1931	9,124	16,523,000	1,770,000	130	753,976	77.9	118,886 D
1932	2/	10,151,000	1,132,000	94	2/	62.2	124,081 D
1933	6,734	14,000,000	1,268,000	121	529,894	75.4	51,885 D

Sources: Number of Establishments and Dollar Volume from Census Manufactures, 1929, Vol. I, "Lumber and Timber Products" (not elsewhere classified) p. 28; "Planning Mill Products," p. 50; "Boxes, Wooden, Except Cigar Boxes," p. 22. Releases for 1931 and 1933.
Production: 1929 From Bureau of the Census; all other years from Forest Service.
Exports: Foreign Commerce and Navigation of the U. S., Bureau of Foreign and Domestic Commerce.
Per Capita Consumption: U. S. Forest Service, Dept. of Agriculture.

Footnotes continued on next page.

Sources: (Con't.) Wholesale Price Index: Bureau of Labor Statistics (Index converted from 1926 base)
Net Income Returned: Bureau of Internal Revenue, Statistics of Income.

A declining trend in the industry is apparent, commencing prior to the depression. Between 1925 and 1929 per capita consumption fell 20 per cent. In part, this was attributable to the fact that the Construction Industry, which consumes between 60 and 70 per cent of all lumber produced, operated at a somewhat lower rate in 1929 than in 1925. More permanent, however, in its implications, is the effect of the gradual replacement of lumber by substitute materials. Thus in general construction steel and concrete, and recently even copper, have been gradually displacing wood. According to an estimate made by the Division of Research and Planning (*), there was 28 per cent less lumber proportionately, to other building materials used in general construction in 1927 than was used in 1919. In other fields such products as metal furniture and cardboard and fiber boxes have materially contracted the market available to lumber.

The production capacity of the Lumber Industry has materially exceeded the demand for many years. Estimates of present capacity range from 66 billion board feet by the Lumber Code Authority to 82 billion feet by the Timber Conservation Board; the largest recent consumption was 41 billion board feet in 1925. (**)

Heavy and increasing taxes and other carrying charges on timber stands and overhead on idle mill equipment burden the industry severely. Wasteful and uneconomic logging methods have further aggravated the situation.

These difficulties had been reflected in steadily diminishing profits. In 1919, 2386 out of 2953 sawmill and planing mill corporations reported net incomes, with a total profit for all reporting companies of $136,716,000. In 1929, 1876 of 3736 companies, or less than one-half, reported profits, and the total had shrunk to $72,360,000, or less than one-quarter of the 1919 figure. (***)

Footnotes Continued from previous page.

1/ Figures for 1925 do not include Wooden Box Products, which were not reported prior to 1927. Establishments producing less than 200,000 feet of lumber or a value of $5,000 annually not included.

2/ Establishments producing less than 200,000 feet of lumber or a value of $5,000 annually not included.

3/ Data not available.

D Indicates deficit.

(*) NRA Research and Planning Division, Displacement of Lumber in Building Construction, Victor Perlo, Feb. 20, 1934, NRA files.

(**) Evidence Study No. 22, p. 24, Research and Planning Division; NRA files.

(***) Bureau of Internal Revenue, Statistics of Income.

As a result of all of these factors, the industry was extremely vulnerable to the impact of the depression. Referring back to Table II, production in 1932 had dropped approximately 70 per cent from the 1929 level; exports had been cut two-thirds, and prices had fallen 30 per cent. As a result only 186, or less than 7 per cent, of 2946 concerns reported net incomes, with an aggregate net deficit of $124,081,000 for all reporting companies.

Prior to the code, trade associations in the industry were generally not very strong. Concerted efforts to improve conditions had been spasmodic and abortive. In a few cases such efforts had run afoul of the anti-trust laws.

III. CLEANING AND DYEING TRADE

In the Cleaning and Dyeing Trade, as in all service trades, the outstanding characteristic is ease of entry. Conditions in the trade were relatively prosperous during the decade between 1919 and 1929 and the trade grew at a very rapid pace, with dollar volume in 1929 approximately four times that of 1919.

As a result of this extremely rapid growth, the trade faced the depression with producing capacity materially in excess of demand. As consumer purchasing power dropped between 1929 and 1933 sales fell off sharply. The extent of resultant over-capacity may be inferred from the following example, probably reasonably typical of the country as a whole. In Baltimore, Maryland, according to a survey conducted by the Price Study Board of the Cleaning and Dyeing Trade, FRA, only 30% of available capacity was being utilized.

Overhead is an extremely important factor in this industry insofar as cost of production is concerned. According to the Baltimore study above mentioned the cost of cleaning an individual garment, in a representative plant, was 28¢ at 100% of capacity and $2.30 at 10% of capacity. Consequently, pressure to increase sales through price concessions is extreme.

The problems which over-capacity combined with heavy overhead would have in any case created were aggravated in this trade by the entrance, during the period subsequent to 1929, of a new element - the so-called "cash and carry" operators doing business on a chain store basis. These new entrants immediately sought to secure business by the most obvious method - reduction of the established price. At first these reductions brought the price of cleaning a standard garment down to $1.25 and $1.00 (the earlier prevailing price had been $1.50); in fact, many of the cut-rate operators in various localities are still called "Dollar Cleaners." These prices were, however, met by the old line operators and the resultant price wars resulted in a rapid drop of prices to as low as 29¢ in many localities, and even 19¢ or, in extreme cases, two for 19¢, as "specials."

It was alleged by the old line cleaners that the low prices of the cash and carry operators reflected slip-shod workmanship in many cases.

It was further charged that the advertised rates were frequently deceptive and of a loss leader nature. Cleaning would be advertised at 29¢ a garment, but customers on reaching the store would be told that the garment, especially if a woman's dress, required special handling and that the price would be substantially higher. The old line element in the trade sought by every available means to restrain the competition of the cash and carry operators. In many areas conditions reached such a pass that the racketeer found a fetile field for his services. In a number of cases it was alleged that prices had been maintained through racketeering methods. The bitter competition between these two groups shows no signs of abatement at the present time. Prices in New York City, for example, are still around the depression lows.

Perhaps the greatest sufferers in these price wars were the retail tailors, through whom the old line wholesale cleaners distributed their services. The income of tens of thousands of these retail tailors has fallen well under the subsistence level.

IV. CAST IRO SOIL PIPE

The Cast Iron Soil Pipe Industry as defined in the code "means and includes the business of producing and selling cast iron soil pipe and cast iron soil pipe fittings". The pipe and fittings are standardized products used in building construction. There are no important substitutes, consequently the rate of activity in the industry is directly dependent upon that prevailing in the construction industry.

The industry is small, consisting of 60 concerns, with an output in 1929 valued at $18,765,000. By 1933 sales had shrunk almost 75 percent, or to $4,809,000. (*)

Output has declined steadily since 1925, paralleling the recession in building activity. From a maximum production of 510,000 tons in 1925, there was a drop to 482,000 tons in 1927, 250,000 tons in 1930, and 118,000 tons in 1932. (**)

During this same period there was a continuous decline in price, interrupted only by a few minor rallies. In 1926 the average wholesale price of 6 inch, Class B and heavier, Cast Iron Soil Pipe, delivered in New York (carload lots) was $51,00. In 1929 the average was $37.00, and in 1932, $30.00. (***)

Sixty-five percent of the total volume of the industry is manufactured in the vicinity of Birmingham, Alabama. In pricing its products, members customarily use the equivalent of a basing point system, bases on Birmingham. Due to the necessity of maintaining large inventories for filling orders with dispatch, the wholesaler is the logical distributor in any local area. It would be impracticable for the plumber to keep in stock the necessary supply of pipe and fittings to take care of

(*) U. S. Census of Manufacturers, 1929, Vol. II, and Release for 1933.
(**) American Metal Market, Metal Statistics 1933, p. 121.
(***) Wholesale Prices, BLS

his requirements. Hence the principal line of distribution is from manufacturer to wholesaler to plumber to consumer.

The industry is dominated to a marked degree by one individual - Mr. C. A. Hamilton - who is alleged to own foundries all over the country and warehouses in nearly all big cities.

Ever since the slump in construction, competition has been characterized by intermittent price wars, followed by periods of relative stability. It was one of these wars, started by an individual industry member, that was the immediate occasion of the plea for price regulation.

V. LIMESTONE INDUSTRY

The Limestone Industry, as defined in the code, comprised both the quarrying and fabrication of limestone for building purposes.

At the present time the vast majority of limestone used in the United States is quarried in Indiana. Fabricating plants are run in conjunction with all quarries. In addition to these integrated units, are independent cut-stone contractors located throughout the country, (there is a specially important concentration in the New York metropolitan area), who purchase rough stone from the quarries. The integrated units possess certain marked advantages over independent cut-stone contractors, primary among which are lower freight charges. These are made possible by the removal of waste material from the rough stone before shipment. Furthermore, labor costs are frequently lower than those of cut-stone contractors. The most marked difference in labor charges is between the Indiana rates and those prevailing in the New York metropolitan district.

In 1929 the industry comprised 600 concerns with aggregate annual sales of approximately 35 million dollars. In 1932 sales had fallen to 15 million dollars, and in 1933 to $7,500,000. (*)

This drop was, of course, primarily due to the slump in construction activity, though a limited displacement of limestone by other building materials, (e.g., artifical stone), coupled with changes in architectural styles, was possibly a minor contributing factor.

The nominal price of rough stone at the quarry has varied little in the last ten years. This nominal price, however, frequently bore little relation to the actual price, competition having centered on the offering of discounts and concessions.

The price of finished stone, during this period, was subjected to increasing pressure from general contractors. The industry is entirely a special order industry, contracts being almost invariably alloted on the basis of bids. General contractors, eager to obtain a job at any cost, would exert every type of pressure on the limestone subcontractors to reduce their figures. Bid peddling was the rule rather than the exception. Where the limestone fabricator agreed to take work at a reduced figure, he was usually forced to resort to such practices as the "kick-back" to pare his labor costs to the bone and avoid heavy losses.

VI. MALLEABLE IRON INDUSTRY

The Malleable Iron Industry is a branch of the general foundry industry. Until 1901 the chief outlet for its product was railroad car building. With the advent of the steel car a substantial portion of this business was gradually lost. Concurrently, however, the requirements of the growing automobile industry more than compensated for this loss.

(*) Estimate, National Limestone Industry Associated, Code Application, NRA Files

Peak production for this industry was reached during the war. New foundries were opened and old ones expanded to meet the war demand. According to the trade association, the industry has never operated at capacity since the war, and there is small likelihood of its doing so at an early date.

The major outlets for the products of this industry, together with the relative percentage of total production normally used by each, are approximately as follows:

Automotive Industry	- 50 percent
Railway Transportation Industry	- 12 percent
Agricultural Implement Industry	- 08 percent
General Machinery, miscellaneous uses and specialties	- 26 percent (*)

Pertinent statistical data with reference to the industry are included in the following table:

TABLE "A II

Malleable Iron Industry

Production and Capacity Utilization - 1925 to 1933

Year	Value of Products (000)	Quantity (U short tons)	Percent capacity utilization
1925	$106,148	728	--
1927	87,340	---	--
1929	101,109	735	71.0
1930	---	---	44.0
1931	35,394	299	27.0
1932	---	---	17.0
1933	36,603	338	--

Source: Value of Products and Quantity - Census of Manufacturers:
Capacity utilization - Research and Planning Division
Report, 10/3/33

These figures disclose a loss from 1929 to 1933 of 74% in value of products and 54% in tonnage production. This contraction may be traced directly to the slump in the industries utilizing its products. In view of the nature of its markets, it is impossible for the industry to stimulate sales by reducing prices. The extent to which this decline in demand was reflected in prices and in profits is depicted in the following table, which covers a substantial section of the industry.

(*) Transcript of Hearings, October 3, 1933

TABLE A III

Malleable Iron Industry

Prices and Profits - 1925 to 1933

Year	Number of Concerns Reporting	Sales (Short tons)	Price per ton	Percent net profit or loss
1926	26	189,814	$133.77	3.6
1929	27	209,066	138.03	5.3
1930	30	120,713	131.96	-1.4
1931	31	71,314	118.20	-19.8
1932	27	35,743	107.00	-22.8
1933	25	44,678	112.32	-11.3

Source: Malleable Iron Research Institute; figure submitted in letter May 23, 1935, from Code Authority to Asst. Deputy Administrator - Code folder No. 7, N.R.A. files.

Price competition was aggravated by the fact that a few large producers had secured a great percentage of the automobile tonnage and were in a position to sell at low prices in other fields in order to maintain a high operating rate, thus forcing other producers to cut prices in order to retain volume.

In 1926 the American Malleable Castings Association and forty-eight of its members were indicted for violation of the Sherman Act in a Federal Court at Cleveland, Ohio. It was charged that the Association and its members were engaged in price-fixing. As explained in an excerpt from "Daily Metal Trade", for August 10, 1926, the system used was as follows (apparently the paper quoted a statement by Federal Counsel):

> "One of the Bureau (basic) rules was that before quoting to an inquiry the inquiry should be sent to Belt, the Association secretary, for what information he had. Buyers asked three or four manufacturers to quote prices. When one got the inquiry he communicated with Belt. They had a Code. Belt would go to the record and find Mr. Jones, the customer, listed by the Laconia Company. Then he informed the others. Belt would send back information before any of them quoted prices, what had been asked and what was listed. They prevented the customer from getting quotations and also prevented competition. But that was not all. They would, in many instances, get in touch with one another and agree over the price that was to be charged. If we had gone to trial, we would have shown that in 97% of the purchases by volume, the customer eventually traded with the man listed for him."

The Mr. Belt referred to above was later secretary of the Code Authority.

Whether as a direct result of these restrictive efforts by the Trade Association, or for other reasons, the General Motors Corporation erected its own plant for the manufacture of malleable castings. (This plant is the largest unit in the United States.) A substantial portion of the industry's potential market was thus eliminated. It was alleged that the Ford Motor Company and other powerful buyers, profiting by this example, exert pressure to secure price reductions through threats of entering the field. (*)

VII. WASTE PAPER TRADE

The Waste Paper Industry gathers waste paper at all points where such paper accumulates. About 90% of waste paper is sold to paperboard mill, in which mills waste paper constitutes about two-thirds of the raw materials used. The code defines the Waste Paper Industry as "the buying and/or handling for resale purposes on commission or otherwise of waste paper." The processes involved are collecting the paper, removing the dirt and foreign material, grading and sorting, packing or baling, storing and shipping. The principal kinds of waste paper are mixed papers and newspapers.

Paperboard mills are able to dictate waste paper prices largely because of the lack of cooperation within the Waste Paper Industry. This control was exercised to a considerable extent by some of the larger mills, which acquired a controlling interest in large wastepaper handling plants at strategic points and installed their purchasing agents as managers. The prices set by these captive units became the ruling prices in the Trade.

The causes of price dislocation in this industry are not to be found in the demand situation, which is fairly healthy. The increasing use of paperboard results in an expanding market for its raw materials. Although kraft pulp has been gaining importance as a raw material for boxboard in competition with waste paper, the demand for waste paper is more likely to be sustained or to increase than to decrease.

Prices paid for waste paper at the source are frequently bid up far higher than necessary to bring forth the amount of waste paper needed, and frequently to figures higher than the price at which, after the addition of conversion cost, dealers can sell to consuming mills. This buying competition arose originally without pressure on the part of the sources of supply. Even in the absence of a demand for waste paper, these sources would still produce almost as much waste paper as they do now and in some instances would pay to have it removed. The price of waste paper at the source is thus, by and large, entirely independent of cost considerations. The fact that it is so high is explained solely by competition between members of the Waste Paper Trade in their attempts to have available waste paper of sufficient quantity and varied enough quality to insure their being able to meet the demands of their customers.

The evidence is that waste paper dealers made most of their profits on grades of paper other than the two grades sold in largest volume - mixed paper and newspapers - for prices on these special grades appear to be less a matter of dictation by the consuming mills than do the

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(*) Letter, Lake City Malleable Company to H. O. King, Deputy Administrator, March 2, 1934, NRA Files.

prices on mixed papers and newspapers.

Competition is further intensified by the fact that the capital requirements for entering the Waste Paper Industry are small.

VIII. THE SCREW MACHINE PRODUCTS INDUSTRY

The Screw Machine Products Industry is a highly specialized one producing complex pieces of steel, brass and aluminum for such consumers as the Automotive Parts Industry, the Electrical Equipment Industry, the Jewelry Industry, The Plumbing Industry and the Army and Navy Department. Typical products are spark plug bases, hose nozzles and aluminum airplane brake bands.

The products of this industry are made to customer specifications and demand is entirely contingent upon the requirements of the industries consuming its products.

This industry owes its separate existence to the following factors: (1) small consumers cannot afford to operate a screw machine unit for their own consumption, (2) most large consumers would find it extremely costly to install such a highly specialized technological unit, since its operation would be generally foreign to their main business, and since a plant of sufficient capacity to cover their needs in peak seasons would be idle at other times and present additional personnel problems and increased overhead. Since the products of this industry are made to customers' specifications, business is done directly with the consumer.

According to figures supplied by the Industry, there were, in 1934, a total of 357 units manufacturing screw machine products. Census data show value of products in 1933 as $27,579,000, a reduction of approximately 70% from the 1929 figure of $91,468,000.(*)

The average unit in this industry is small in size. 242 of a total of 336 companies had less than 20 automatic screw machines in 1934.

Maximum production in this industry occurred during the war and the peak then reached has never since been duplicated. It was alleged that many of the smaller plants in this industry had no accurate knowledge of their production costs, and that, taking advantage of this situation, consumers, who are, in general, large and powerful concerns, were able to pit with known costs against plants with unknown costs, forcing all prices down to extremely low levels.(**) Whether or not due to ignorance of costs, bids have frequently shown tremendous ranges of variation. In one case bids submitted in accordance with Government purchase order specifications ranged from a low of 35¢ to a high of $8.50 for the same article.(***)

(*) U. S. Census of Manufacturers, 1929, Vol. I. p. 31, and Release for 1933.
(**) Bulletin of the Trade Association, January 23, 1934.
(***) Transcript of Public Hearing, February 8, 1934, pages 78-79

According to representations by this industry, less than 10% of the industry operated at a profit during 1931, 1932, and 1933. (*) Due to the large investment in machinery, overhead or fixed costs are two or three times higher than for any other metal work industry. Cost is therefore dependent on volume to a marked degree.(**)

IX. FUR DRESSING AND FUR DYEING INDUSTRY

The Fur Dressing and Fur Dyeing Industry comprises the business of dressing or dyeing or otherwise processing all kinds of raw skins, preparatory to their use in the manufacture of wearing apparel. The business is entirely a special order industry, dependent for demand on the rate of activity prevailing in the Fur Manufacturing Industry.

The following table reveals the extent of the industry and the effect of the depression on it:

TABLE XIV

Fur Dressing and Fur Dyeing

Salient Statistics - 1929 to 1933

	1929	1931	1933
Number of establishments	248	243	181
Wage Earners	5,167	5,160	5,364
Value of Products (thousands of dollars)	40,257	37,873	24,948
Value added by manufacturer (thousands of dollars)	21,588	21,652	15,408

Source: Census of Manufactures, 1929; Volume II, p. 1295; Mimeographed releases for 1931 and 1933

It is apparent that while the number of wage earners actually increased between 1929 and 1933, the amount received for work done declined approximately 40% and the value added by manufacture, approximately 30%.

There is a division of firms in the industry by processes and kinds of raw furs treated. Some shops are engaged exclusively in dressing fancy furs (which means all furs except rabbit); some in dressing rabbit skins; some in dyeing fancy furs; others in dyeing rabbit skins; and a few in both dressing and dyeing all kinds of skins. Organization in the trade is backward and decidedly factional. There are trade associations for each of the main groups of plants but no centralized organization for the entire industry. A vexatious right and left wing labor problem hinders centralized organization.

(*) Bulletin of the Trade Association, January 23, 1934

(**) Public Hearing, Volume 3, pages 75, 94.

The Fur Dressing and Fur Dyeing Industry is dominated to a marked degree by one concern, A. Hollander and Company of Newark, New Jersey. This company has three plants employing about 30% of the labor and handling between 20% and 30% of the total business of the industry. In September, 1933 it employed 1,315 workers, whereas at that time no other company had more than 300 workers. The great majority of establishments had less than 40 employees each.

The Hollander Company made a profit in each of the 40 years preceding 1934, except 1932. This did not, however, represent the experience of the general run of the industry. In the years just preceding the codes, there was an unknown but apparently large number of failures, especially in the dressing branch. Abandoned plants in the hands of creditors were available for as low as 5% of actual cost. It was said that in the five years preceding NRA there probably had been no single company which entered the dog skin (foxes, squirrels, wolves, jackals, coons and raccoons) dyeing business except by the purchase of bankrupt assets. (*) It requires little capital to establish a dressing shop. The machinery is simple and inexpensive. Workers thrown out of employment found it relatively easy to enter the business on their own account.

Although high hourly wage rates were maintained by the unions (the rate in 1933 was $1.27 to $1.60 per hour for unskilled workers), a system of equal division of work and the prevalence of the "kick-back" reduced the weekly pay envelope. When production was slowed up and wages cut, small groups of discharged or dissatisfied workers would band together and form so-called "cooperative" shops and go into the fur market soliciting business, hoping thereby to increase their earnings, although realizing that to do so it would be necessary to increase their hours and to cut prices. A few hundred dollars and a vacant loft were all that was required for a dressing shop. A case was cited in which nineteen men formed a cooperative with an investment of only $400. In some cases these new enterprises took the form of family affairs, with plant and home in the same quarters.

Due to these practices the industry became overmanned as to workers and over-supplied in units. One branch, the fancy fur dressers, had a volume of business of approximately $5,000,000 in 1926, but in 1933 this had fallen to $1,500,000. In spite of this decrease, the number of plants in the division increased from 25 in 1926 to about 46 in 1933, and it was estimated that its capacity had increased to about four times its necessary size. (**) In the Rabbit Dressers Branch, which handles about 30% of the total volume, there were, in 1934 about 28 shops which serviced about 35 customers.

Apparently very few of the small units are organized on a sound business basis or keep any sort of records.

Competition in the fur dressing and dyeing industry, as in service trades generally, revolves mainly around price. This is particularly the case in the dressing branch, where low price is the only consideration of the customer. In the dyeing end of the business, the dye for-

(*) Transcript of Public Hearing, April 4, 1934, p. 24; NRA files
(**) Transcript of hearing, April 27, 1934, page 24.

mula, the secret process employed, the knowledge and technique in the art of dyeing, the financial responsibility and the reputation of the dyer, as well as the confidence inspired by him in his product, are important factors in determining, not only his ability to attract business, but the value of his services.

With the entry of the cooperatives, who sought business on the basis of price reductions, competition became intensified. The older firms, observing union hours and wage scales, could not compete with the sub-standard labor conditions and resultant low prices of the cooperatives, and below cost service charges became prevalent. Some of the larger firms were forced to discontinue processing certain skins.

Attempts by trade associations to remedy these conditions ran afoul of the anti-trust laws. On November 6, 1933, two indictments were returned in New York - one naming the Fur Dressers Factors Corporation, and the other the Protective Fur Dressers Corporation, (both trade organizations), alleging violations of the Anti-trust laws. In addition to the principals, some 80 individuals and 68 corporations in the fur trade were named, including the left-wing International Needle Workers Union and several locals of the International Fur Workers Union of the United States and Canada. It was charged that, beginning about January, 1932, the defendants had agreed to eliminate competition among themselves as to prices, terms and conditions of sale. It was also charged that, from time to time, they had fixed uniform, excessive and non-competitive prices. Racketeering, boycotting and terroristic activities were charged. These indictments are still pending, the cases not yet having been brought to trial.

X. THROWING INDUSTRY

The Throwing Industry is engaged in the twisting of silk and synthetic yarns used in the manufacture of woven and knitted fabrics. Work is done to customer specifications. There are two main divisions:

1. Commission throwsters who merely perform the throwing process for the owners of the yarns. It is estimated that 60% of the total volume is handled on a commission basis. (*)

2. Those who throw material for sale or for their own use or both. Aside from the Commission Throwsters, many textile plants operate their own throwing machines and later weave or knit the product into cloth or other fabrics. A further group exists in the industry who buy the raw silk, process it and sell it to the knitters and weavers.

Volume in the Throwing Industry is entirely dependent upon the rate of activity existing in the industries it services.

According to the Census of Manufactures, the total volume of rayon and silk thrown for the years 1929 to 1934 varied very little.

(*) NRA Evidence Series, #39, p. 1

The total dollar volume in both 1933 and 1934 showed a slight increase over the figure for 1929. This was due to the increase in the amount of rayon yarn thrown, which more than compensated for the decrease in silk yarn. The industry is predominantly composed of small concerns. According to the Code Administration Committee, there were 285 members in 1934; of these, 192 had less than 10,000 spindles and only two had more than 100,000.

The cost of production represents almost entirely labor and overhead. In the period between January and June, 1934, labor represented 59.1% of net sales and material 1.6%; the balance, or approximately 40%, comprised overhead charges and profit or loss. (*)

The price problem in this industry was occasioned primarily by the small size of the average unit, the lack of organization, and the mutual suspicion prevailing. Buyers usually found it possible to secure substantial reductions in price quotations through playing one member against another, frequently misrepresenting terms offered by competitors. In view of the high percentage of overhead and the fixed total volume available, the pressure for securing work through price cutting is severe. The high ratio of labor cost, in turn, leads operators who have secured business through price concessions to cut costs by reducing wages. Since labor represents such an important cost factor, throwsters located in areas where low wages are the rule operate at a distinct advantage.

(*) Federal Trade Commission Textile Report, Part IV, Silk and Rayon Industry

XI. AGRICULTURAL INSECTICIDE AND FUNGICIDE INDUSTRY

This industry comprises the "manufacture of products which are used as methods of protection against agricultural insect pests and fungus diseases, such as chemical plant sprays and dusts, soil disinfectants, cattle dips, agricultural scalecide and baits, except cyanides". By far the most important products of the industry, (and the only ones with which the minimum price study is concerned), are the arsenates of lead and calcium.

The industry is a small one. Generous estimates place the capital at $15,000,000. Only 15 firms are engaged in the production of the two arsenates. Of these, two or three produce only arsenates, while the rest produce other insecticides or other chemicals or paints. The largest of these firms is the General Chemical Company, a subsidiary of the Allied Chemical Company.

The value and physical volume of production of the two arsenates between 1929 and 1933 is revealed in the following table:

TABLE A V

Agricultural Insecticide & Fungicide Industry

Calcium and Lead Arsenate
Production and Value, 1929 - 1933.

	Calcium Arsenate		Lead Arsenate	
Year	Pounds (000)	Value (000)	Pounds (000)	Value (000)
1929	33,064	$1,860	30,682	$3,523
1931	26,129	1,280	37,974	3,674
1933	15,487	669	29,816	2,368

Source: Census of Manufactures, 1929, "Chemicals, not elsewhere classified." Releases for 1931 and 1933.

In common with many other chemical products, the price of calcium arsenate did not decrease sharply during the depression. From March 1932 to May 1933 the wholesale price index for this commodity remained at 79.1, on a 1929 base. (*)

There is no B.L.S. series available on lead arsenate. Average wholesale prices per pound in New York were 13.5¢ in 1929, 11.6¢ in 1932, and 10.4¢ in 1933, evidencing a decline of approximately the same magnitude as that of calcium arsenate. (**)

(*) Bureau of Labor Statistics, Index of Wholesale Prices

(**) Compiled from "Oil, Paint and Drug Reporter."

At least 75% of the shipments of the two products are made during the spring and early summer. Demand cannot be foreseen, and is entirely dependent upon the prevalence of pests. When the demand exists it must be met immediately, the manufacturer without a stock in the invested area having practically no chance of making a sale. This necessity, together with the establishment of warehouses by some members, gave rise to the practice of consigning goods.

It was charged that pressure from purchasers had had the effect of hammering down prices. It had been customary to ship goods during the winter and spring, with May first dating and a guarantee against price decline. Members of the industry charge that, under these circumstances, customers simply refuse to pay their bills until they have satisfied themselves as to what the lowest price actually paid during the season has been, and then decline to pay a higher figure. By this time the goods have been consumed and the manufacturer capitulates from fear that some other member will proselyte his distributors. The possibility of farmers' cooperative associations entering the manufacturing field has had a tendency to keep prices at low levels. It was specifically alleged that a price below cost of production was set by the General Chemical Company. Members of the industry freely expressed the opinion that the purpose was creation of a monopoly. The General Chemical Company's price was met with an even lower price by Sherwin-Williams. Both of these firms were financially able to wage a price war indefinitely. Ten other members complained that they would soon be eliminated by a war between the two "giants", who, after gaining control of the market would, or could, proceed to recoup their temporary losses.

XII. FERTILIZER INDUSTRY

The term "Fertilizer Industry", as used in the Code includes the importation, production and/or distribution of mixed fertilizer, superphosphate, and/or other fertilizer materials. The definition is further qualified so as to exclude the production of sulphuric acid, potash, phosphate rock and/or nitrogen carriers.

Below is given a table revealing the extent of the industry and its recent trends.

TABLE A VI

Fertilizer Industry
Salient Statistics, 1919 to 1933.

Year	No. of Concerns	Wage Earners	Cost of Materials (000)	Value of Product (000)	Value Added (000)
1919	600	26,296	$185,041	$281,144	$96,103
1929	638	20,926	159,801	232,511	72,710
1931	599	14,551	106,481	154,350	47,869
1933	522	13,063	69,053	94,939	25,886

Source: Census of Manufactures, 1929, Vol. II, p. 380 and Release for 1931 and 1933. Does not include establishments with annual production valued at less than $5,000 in 1931 and subsequent years.

The 1933 sales volume was approximately 41% of that prevailing during 1929. The decrease is directly traceable to the reduced purchasing power of the farmers.

About three-quarters of the plants in the industry merely mix fertilizer materials. The rest produce the ingredients to a greater or lesser degree. This degree of integration, however, is accompanied by very little, if any, price advantage because of the competition of imports and the fact that all fertilizer materials are on the free list.

Before the Code, fertilizer was generally sold through independent dealers. However, due to the practice of these dealers of playing one producer against another, it was alleged that the whole price structure broke down. In self-defense, practically the entire industry went over to the agency system and began to quote on a "consumer, delivered to the farm" basis. Agents were compelled to sell at the producers' list price.

The price trend of mixed fertilizer generally parallels that of fertilizer materials. Early in 1933, however, there was a tendency for the price of mixed fertilizer to fall more rapidly, thus narrowing the margin on which the industry operates. Based on 1929, in December, 1932 the index for the wholesale price of mixed fertilizer was 67.5, and for fertilizer materials 68.5. By March, 1933, mixed fertilizer had fallen to 61.8, while fertilizer materials were virtually unchanged at 67.2. (*)

This industry had for some time boasted a strong trade association, and members had had a fair degree of experience in cooperative action.

Prior to the code, price increases were, to an extent, limited by the alternative available to individual consumers of purchasing fertilizer ingredients separately and mixing them themselves, a practice generally resented by the industry.

XIII. ASPHALT SHINGLE AND ROOFING INDUSTRY

The code defines this industry as "the producing in the United States, and selling by the producer" of the following products: felt-base (made of organic or inorganic fibres), asphalt shingles, sidings and roofings, roll roofings (including cap and base sheet and house sheeting), starting strips, tarred felt, and asphalt felt".

The products of the industry are well standardized, a large percentage being manufactured under licensing agreements with a corporation holding basic patents and itself producing in large volume.

A comparatively small number of concerns are in the industry. The degree of integration among the companies is fairly high. Distribution is through jobbers and through the retail lumber builders supplies

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(*) Wholesale Prices - B.L.S.

dealers. There is no great amount of direct selling to consumers and apparently this method of distribution has been discouraged in the industry.

General statistics for this industry, compiled by the Bureau of the Census, show the following:

TABLE A VII

ASPHALT SHINGLE AND ROOFING INDUSTRY

	1929	1931	1933
Establishments	102	83	74
Wage earners (average for year)	6,027	4,123	4,418
Value of products (thousands)	$103,506	$58,963	$44,833

Source: Census of Manufactures, 1929, Vol. I, p. 31; Release for 1931 and 1933.

Comparing 1933 with 1929, these figures show a drop of 57% in value of products.

The product is highly competitive on a price basis. In 1929, as the result of two years of very disastrous price wars, the industry set up an open price system with a liquidated damage agreement for enforcement. There was no waiting period, prices taking effect as of the time of receipt by the impartial agent -- usually an attorney. This plan had a stabilizing effect on prices in the brief time it was in effect. Although not all members participated (participants numbered approximately 80% by membership and between 85% and 90% by volume), price organization was fairly complete. (*)

The legal validity of the plan was questioned, however, and in 1930 the Department of Justice and the Federal Trade Commission began an investigation of the industry with a view to prosecution under the Anti-trust laws. Suit was instituted by the Government against the principal trade organization in the industry "to prevent further restraint of interstate trade and commerce". The open price plan was immediately changed from one of reporting future prices to one of reporting past prices and the liquidated damage plan was dropped. (**)

The influence on price of the Patent and Licensing Corporation whose patents, although not covering a majority of the products in the industry, covered at least 50% of the total sales, was marked. The prices and terms of sale filed by this company on its products were in general followed by the members of the industry.

There are two trade associations in the industry; the Asphalt

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(*) U.S. vs. Asphalt Shingle & Roofing Institute et al, U.S. So. Dist. N.Y. in equity, 57-162

(**) U.S.A. vs. Asphalt Shingle & Roofing Inst. et al.

Shingle and Roofing Institute, in New York City, and the Pacific Coast Roofing Manufacturers Association in Los Angeles, California. These is indication of the closest cooperation between the two, so close, in fact, that in all probability the western association is an affiliate of the Institute.

During the public hearing on the Code, (September 21, 1933) the usual claims of "price wars, cut-throat competition", etc., were made. It was charged that these were caused by the use of various unfair trade practices such as rebates, secret prices, mis-classification of customers, etc. However, the evidence reveals no price problem in the industry, at least insofar as the seller is concerned. The wholesale price index declined to a very slight degree during the depression. Based on 1929, the B.L.S. index for prepared roofing was 97.2 in 1932, 99.6 in 1933, and 107.3 in 1934.

XIV. FIRE EXTINGUISHING APPLIANCES MANUFACTURING INDUSTRY

This industry is defined in the code as comprising the manufacture of fire extinguishers and of the chemical charges for such extinguishers. Salient statistics for the industry are revealed in the following table:

TABLE A VIII

Fire Extinguishing Appliance Manufacturing Industry
Establishments and Value of Product, 1927 to 1933

Year	No. of Establishments	Value of Products (000)
1927	26	$8,035
1929	28	8,566
1931	25	4,453
1933	22	3,775

Source: Census of Manufactures, 1929, Vol. I, p. 25, "Fire Extinguishers-Chemical." Release for 1931 and 1933.

The list of individual members of industry prepared by the Code Authority in July, 1934 showed a total of 89 members (28 manufacturers of approved devices, 30 manufacturers of unapproved devices, and 31 manufacturers of charging units).

Approved devices are those which have been found satisfactory by the Underwriters' Laboratories or the Associated Factories Mutual Laboratories. Such approval is necessary in order to permit purchasers to benefit through reductions in insurance rates. Approval by the United States Bureau of Standards is necessary for devices to be used on vessels plying in United States waters.

The substantial discrepancy between the number of establishments listed by the Census and the number estimated by the Code Authority may be explained primarily by the fact that the Census lists only manufacturers whose major line of business is the production of fire extinguishers. It is apparent that the depression brought about a

fairly marked shrinkage in business, with volume in 1933 dropping to approximately 44% of that prevailing in 1929.

Demand in this industry is relatively unresponsive to price changes and is to some extent dependent upon activity in the construction industry. Sales costs are usually quite high because apparatus once sold is usually good for the life of the structure in which it is placed.

"Unapproved" devices account for but a small percentage of the industry volume. Products are mostly standardized by reason of Underwriters' requirements. Consequently, price is the important factor in competition. The larger concerns with high overhead percentages, due to more extensive plant facilities, and with expenditure for research and advertising, found themselves at a competitive disadvantage when volume declined with the diminution in building construction during the depression.

XV. HARDWOOD DISTILLATION INDUSTRY

The Hardwood Distillation Industry is engaged in the destructive distillation of hardwood. Its most important joint products are charcoal, methanol, and calcium acetate.

A breakdown of the industry membership in 1932 shows the following:

6 companies affiliated with iron furnaces
6 companies affiliated with lumbering interests
5 companies affiliated with other chemical activities
31 companies independently operated
1 company affiliated with the Ford Motor Company.

Processing plants always locate at or near the main raw material source. This is a natural consequence of the bulky character of wood and the high cost of transporting it any considerable distance.

This industry appears to be faced with contracting markets for all of its products. The primary outlet for charcoal used to be the manufacture of pig-iron. Recent technological improvements have made it possible to substitute coke for charcoal in this process, with the result that whereas 25 million bushels of charcoal were used in blast furnaces in 1925, only 7 million bushels were so used in 1932. In 1925 there were 196,164 tons of charcoal pig-iron produced, but by 1929 this figure had decreased to 138,195 tons, and in 1932 the amount produced was only 15,055 tons. (*) In addition to the displacement of charcoal by coke in the manufacture of pig-iron, the industry is faced with the increasing competition which synthetic methanol and calcium acetate offer to its chemical products.

(*) U. S. Bureau of Census.

In addition to its industrial uses, charcoal is also produced for domestic consumption. Even in this field softwood charcoal offers increasing competition, while the growing use of electrical and gas appliances further narrows the field.

XVI. PLUMBING FIXTURES INDUSTRY

The Plumbing Fixtures Industry comprised 230 concerns in 1933. Volume of business, which in 1928 was estimated at $150,000,000, had by 1933 declined to $35,000,000, while the number of employees dropped from 38,000 to 19,500. (*) Prior to the depression the construction industry offered the principal market for plumbing fixtures. A decline in construction changed this situation. Replacement demand became more prominent and, whereas the bulk of sales had previously been to construction interests, the ultimate consumer now became a much more important factor.

There were two channels through which products were distributed to the ultimate consumer. One was the orthodox manufacturer-wholesaler-plumber or retailer-consumer arrangement. The other was direct from plant through mail order house to consumer. The latter channel was apparently siphoning an increasing share of the volume from the former, although statistics as to the extent of this trend are not available. It is probable that the shift from demand in new construction to replacement demand has constituted an accelerating factor in this shift.

One of the three largest firms in the industry is closely affiliated with Sears Roebuck & Company. Other concerns, including the largest single unit, have their interests identified with the older distributive set-up.

The problems which would in any case have resulted from sharply reduced volume and relatively inelastic demand were, therefore, seriously aggravated by these conflicting interests. As a result of this embittered competition, a sharp decline in the price of plumbing fixtures which commenced in 1926 was not arrested as late as March, 1935. (**)

XVII. COMMERCIAL RELIEF PRINTING

A group of 31 separate and, to a large extent, competing industries was included in the basic Graphic Arts Code. It covered all persons using any of the processes or partial processes used in printing, or who produced or sold any printed matter in competition with those who produce printing. The Code excluded publishers or printers of daily newspapers who subscribed or assented to the Code of the Daily Newspaper Publishing Business, book publishers, and also manufacturers of photo-engraved plates, electrotypes, stereotypes and other

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(*) Code History, Plumbing Fixtures Industry.

(**) Evidence Study, Builders' Supplies Trade.

kinds of relief printing plates.

The three processes of printing are relief printing, lithographic printing and intaglio printing. Of the total number of Graphic Arts establishments, about 38% are commercial relief printers, 29% newspapers, and 18% periodicals, these three representing about 85% of the total number. Due to limitations of space, only Commercial Relief Printing will be considered here. Total sales of Commerical Relief Printers for 1933 were estimated at $300,000,000; the number of employees in the industry was approximately 130,000. (*)

In view of the fact that there is no census classification covering only the Commercial Relief Printing Industry, comparative data are difficult to secure. However, the following table is based on a grouping sufficiently comparable to permit inferences as to behavior of the industry during the depression.

TABLE A IX

Printing and Publishing Industries,
Book, Music and Job

Establishments and Value of Product, 1927 to 1933.

Year	Number of Establishments	Value of Products (000)
1927	11,585	$ 963,133
1929	12,836	1,021,879
1931	11,767	804,019
1933	9,224	519,990

Census of Manufacturers, 1929, Vol. I, p. 30, and Release for 1931 and 1933.

Comparing 1933 with 1929, there is a decrease of 28% in the number of establishments, and 49% in value of products. An index of printing activity compiled by the United Typothetae of America, shows 1933 volume as 59.9 based on 1929 = 100.

Most of the 17,000 commercial printing establishments are very small, many being "one-man" shops, or shops with but one or two employees. However, a relatively small number of large establishments account for a sizeable percentage of the sales of the industry.

The industry is highly decentralized, largely due to demands of its customers for quick service. Its products are used in practically every branch of industrial and commercial activity. Printing is essentially a custom-made product and is generally sold on the basis of quotations made in advance of actual production. The unit cost is decidedly variable, because the labor cost of certain operations on a

(*) Code Application, 1933.

specific job is the same whether a few hundred or a few thousand sheets are printed.

The ratio of profit to sales in the industry, particularly among the larger printers, was satisfactory prior to the depression. Profits declined in 1930, and in 1931, 1932 and 1933 losses were general. Small printers in particular found business survival difficult, as revealed by the following table:

TABLE A X

Commercial Relief Printing Industry

Relation of Size of Plant to Profit
(Annual Sales in Thousands of Dollars)

Year	15	15-35	35-75	75-150	150-300	300-500	500-750	Over 750	Composite
	Ratio - Net Profit to Sales - Percent								
1926	5.89	6.20	3.84	4.92	7.17	8.62	5.85	9.72	6.68
1927	4.20	4.48	5.50	4.10	6.13	7.40	7.46	9.36	6.87
1928	3.07	3.54	3.52	3.62	4.24	7.48	8.44	9.59	6.44
1929	.32	2.44	3.74	4.22	5.00	7.18	7.89	8.21	6.34
1930	.52*	.63	1.37	1.58	2.10	4.27	5.79	8.37	4.15
1931	4.29*	2.52*	1.36*	1.29*	.47*	1.58	4.20	4.14	1.22
1932	8.36*	7.89*	6.99*	5.40*	5.08*	1.87*	1.43*	.69	3.64*
1933	8.41*	6.69*	4.69*	2.86*	2.30*	.13	2.25	3.13	1.25*
1934	.65*	1.04	.88	1.85	.52	.56	1.20	2.19	1.11

* - Denotes Loss

Source: "Ratios for Printing Management," United Typothetae of America.

The ability to purchase printing machinery and equipment on liberal terms made it easy for a printer to establish his own shop. Lack of cost knowledge or a disregard of costs may have contributed to general price cutting which increased as available business continued its decline during the depression period. Lack of price stabilization in the industry may be largely attributed to the monotomous appearance of small "bed room" printers, who ran out their shoe string through a series of ridiculously low bids and were replaced by others.

Large units have in many cases moved out of cities into less populated areas to avoid high rentals and labor costs and to escape labor troubles. These have, in many cases, been able substantially to undercut urban plants.

Federal and state public printing offices, and private printing plants operated by large corporations to do their own and other printing, have diverted much business from the commercial printer. In small towns newspaper plants also do commercial printing. Within the Graphic Arts Industries, lithography has to some extent supplanted relief printing. Office devices, such as the mimeograph and multigraph, encroach on printing volume.

The United Typothetae of America is the predominant trade association and, as such, presented a code for the industry. It was said to be principally representative of the larger printers. For many years U. T. A. had been developing a program of cost accounting, suggested price lists, and the like.

XVIII. WOOD CASED LEAD PENCIL INDUSTRY

Salient statistics with reference to this industry, which is sufficiently defined by its title, are contained in the following table:

TABLE A XI

The Wood Cased Lead Pencil Industry
Salient Statistics 1928 to 1934

	1928	1929	1930	1931	1932	1933	1934
No. of companies a/	11	12	12	12	12	13	13 c/
Shipments (11-12 Cos.) c/							
Thousands of gross	-	-	5583	4840	4104	4281	4359
Thousands of dollars	-	-	12054	9889	7607	8579	9367
Avge. selling price per gross	-	-	2.16	2.04	1.85	2.00	2.15
Shipments (8 cos.) d/							
Thousands of gross	5714	5454	5104	4339	3642	-	-
Thousands of dolls	14140	14019	12060	9566	7289	-	-
Avge selling price per gross	2.47	2.57	2.36	2.20	2.00	-	-
Exports (thousands of gross) e/	481	565	496	330	181	172	255
Imports (thousands of gross) e/	142	186	147	94	69	227	210

Sources:

a/ Application for NRA Code of Fair Competition submitted in 1933 by the Lead Pencil Institute, Inc.

c/ Lead Pencil Institute, Inc. Figures are for 11 companies prior to 1933, and for 12 companies subsequently

d/ Lead Pencil Institute, Inc., as published in "Schedule B", contained in the folder for this industry in the files of the Division of Research and Planning, NRA

e/ Bureau of Foreign and Domestic Commerce, Foreign Commerce & Navigation of the U.S., 1926 to 1934

NOTE: The file referred to in Note d/ also contains a table showing composite profit and loss statements for 8 companies, for each of the years 1926 to 1932, inclusive, compiled by the Lead Pencil Institute, Inc.

The sharp decline in shipments appears to be attributable to several factors.

1. The general effect of the depression
2. The decline in the export market
3. The sharp recent increase in imports, occasioned chiefly by the entry of Japan into the field. Imports from this source alone, which were negligible in 1932, exceeded 100,000 gross in 1933. Japanese pencils could be sold profitably in this country at less than the cost of domestic production for the cheapest grades.
4. Probably most important, the rapidly increasing popularity of fountain pens, typewriters, bookkeeping machines and, most important of all, mechanical pencils.

Despite the drop in both production and price, however, the industry maintained a profitable record through 1931, in which year eight of the largest companies reported an aggregate net profit of $146,000, representing a return of 0.82% on invested capital. In 1932 the same companies reported a loss of $537,000, or 2.06% on invested capital.* It was estimated by the Lead Pencil Institute that less than one-half of total productive capacity was utilized in 1932.

This industry has long been dominated by four large companies. Their aggregate percentage of the total declined, however, from 80% in 1927 to 66% in 1933.

Up to 1928, apparently, these "Big Four" were in a position to dominate the industry effectively. Beginning with that date, however, certain small manufacturers of comparatively recent origin began to assert their independence and poach on the preserves of the "Big Four". The old concerns claimed that this was done by means of destructive price cutting, shading of quality, and cheap imitations of established lines of pencils. The organization of the Lead Pencil Institute, Inc., in 1929, was presumably for the purpose of dealing with this new competition. Competing distributive channels further complicated the price structure. Distributors include:-

1. Wholesalers - primarily wholesale stationers
2. Dealers in school supplies
3. Distributors who handle blank pencils only, which they sell for advertising purposes
4. Mail order houses and chain store organizations
5. Direct to large consumers (educational institutions, large corporations, government agencies).

A major factor in the recent collapse of the price structure and the breakdown of functional distinction in the distributing field was the ability of large customers of the manufacturers, such as chain organizations, very large wholesalers and retailers, to secure large discounts on their orders. In some cases factories were wholly dependent for their existence on one large customer - for example, the Woolworth Company bought almost the entire output of the Empire Pencil Company

(*) Lead Pencil Institute

and 60% of the output of the Eberhard-Faber Company.

XIX. COFFEE INDUSTRY

The Code defined this industry as the "importation, purchase, distribution and roasting of green coffee, and the distribution of coffee at wholesale by persons engaged in the roasting thereof, whether directly, through affiliates or subsidiaries, or by contract with other persons." It is estimated that there are approximately 1,400 establishments in the industry, many of which are very small.

In 1933 the annual net sales reached 200 million dollars, and the total volume of coffee roasted was slightly in excess of 11 million bags. Of this total, the dominant unit in the industry roasted 2 million bags; the next two had a combined total of 2 million; and the next seven a combined total of over 1 million bags. Thus, the ten largest companies produced approximately 60% of the total volume. Of the balance, more than one-half roasted less than 2,500 bags of coffee per year.*

Units varied not only in size but in degree of integration. Thus, of the three largest units, one not only roasts the coffee but distributes it and sells it at retail. Another roasts the coffee and distributes it directly to independent retailers. The third distributes through wholesalers.

Because of intensive advertising campaigns financed by these overshadowingly large units, coffee is no longer sold merely as coffee, but rather as a package with a specific label on it. Advertising emphasis varied. Thus, of these three largest companies, the appeal of one is based on the sale of fresh ground coffee, of another on the sale of dated coffee, and of the third on the sale of vacuum packed coffee.

Competition in the industry is rendered more intensive because of the virtually complete inelasticity of demand. Per capita consumption has been almost unchanged over the past decade. Coffee may be considered a "conventional necessity". Price increases may serve to shift the demand from higher to lower grades of coffee, but will probably eliminate only a negligible number of marginal consumers.

The cost of production of the large units is, in general, appreciably lower than those of the smaller establishments. Furthermore, this large purchasing power enables them to purchase green coffee in large quantities on a low market. The product of these large units commands distinct consumer preference as a result of advertising. Consequently, the competitive position of the smaller units has become increasingly difficult.

A further problem confronting the industry was the fact that coffee was frequently used as a loss leader by retail grocers. Chain stores immediately met these loss leader prices and in many cases cut

(*) Proposed Budget and Basis of Contribution, Code Authority Accts. Files, N.R.A.

below them. This price war in the retail grocery trade was reflected directly back to the coffee industry where roasters, seeing their volume endangered, lowered prices. Certain units resorted to such practices as (1) guaranteeing prices for a period, binding only on the manufacturer, and abrogated in the event of a decline in price, (2) allowing a buyer brokerage fees, (3) rebilling customers unsold stocks at lower prices in a falling market, (4) giving premiums of coffee or other merchandise with coffee purchases.

XX. CANVAS GOODS INDUSTRY

The Canvas Goods Industry, as defined in the code, includes "the manufacture and, when done by the manufacturer, the selling and/or distribution at wholesale or retail" of such canvas articles as awnings, canopies, tarpaulins, etc.

Salient statistics are revealed in the following Table:

TABLE A XII

Canvas Goods Industry
Number of Establishments and Annual Sales, 1928-1933.

Year	Number of Establishments	Annual Sales
1928	1,002	$75,856,000
1929	1,002	78,856,000
1930	950	65,321,000
1931	928	67,826,000
1932	913	65,321,000
1933	850	57,693,000

Source: National Tent and Awning Manufacturers Association; figure contained in code application, N.R.A. files.

It is apparent that sales volume was not severely reduced during the depression. However, due to the large number of units, and to conflict of interest between units of different sizes, severe competition has been prevalent. The industry may be divided into the following four groups:-

1. Large manufacturers doing business in excess of $10,000 per year, producing for a national market at comparatively low cost, distributing primarily through wholesale.

2. Medium size manufacturers doing between $20,000 and $100,000 business per annum, manufacturing for a regional market, distributing primarily directly through retail.

3. Small manufacturers doing between $5,000 and $20,000 worth of business per year, manufacturing for a restricted area, and usually only to specifications.

4. Handcraft shops doing less than $5,000 worth of business per annum, manufacturing in their homes, with family labor, for a strictly neighborhood market.

The amount of capital required by the handcraft operator is practically nil. According to a statement made at the public hearing, $52.00 was all that was required: $50.00 for sewing machines and material, and $2.00 for a marriage license to get a wife to do all the work.*

Of plants reporting to the Bureau of Census in 1929, 47.4% did less than $20,000 per annum, and 89.5% less than $100,000. In addition, there were, approximately 2,500 handcraft plants scattered throughout the country. The competitive problem in the industry apparently reduces itself to the difficulty of maintaining any sort of stable price structure in the face of the competition of the handcraft unit.

XXI. FURNITURE MANUFACTURING

The products covered by this code are those commonly known as "household furniture", whether used in the home or elsewhere, wood office chairs, wood office desks, and wood office tables, parlor frames, chairs in the white, furniture parts made of wood and other unfinished household furniture. Mattresses, pillows and box springs are not included.

General statistics of the Bureau of the Census cover several industries not included under this Code. However, since "household furniture" accounts for from 70% to 80% of the total value of the products reported by the Census, the following data may be considered as roughly applicable to the industry covered by this code.

TABLE A XIII

Furniture Manufacturing Industry
Establishments and Value of Products, 1929-1933

All Furniture Manufacturing	1929	1931	1933
Number of Establishments	3,778	3,148	2,411
Value of Product (in thousands)	$948,116	$482,289	$297,730
Household Furniture Only			
Value of Product (in thousands)	$659,023	$350,980	$235,309
Percentage of Household to total	69.5	72.8	79.0

Source: Census of Manufacturers, 1929, Vol. II; Releases for 1931 and 1933.

(*) Transcript of Public Hearing, December 14, 1934, pp. 75 to 96; N.R.A. files.

Furniture is a product whose purchase can readily be defferred during bad times. As a result, sales of household furniture in 1933 were only 36% of those in 1929.

The industry includes a large number of small concerns. In 1931, of the total of 3,148 concerns listed by the Census, 709, or 23%, sold less than $20,000 in value during the year; 1,416, or 45%, less than $50,000; and 1,988, or 63%, less than $100,000.*

Industry over-capacity and the resultant keen competition frequently enabled mail order houses and chain stores to dictate terms. Conflict in interest between alternate channels of distribution was a serious problem. Large manufacturers compete with small manufacturers in practically all localities. While the individual production of these small shops is not large, their aggregate production is material. They sell their goods in their immediate vicinities and their expenses are small. They are, accordingly, able to undersell the more distant factories and are said to constitute a material factor in holding down price levels.**

In 1928 the Federal Trade Commission forced the disbanding of the National Alliance of Furniture Manufacturers, which had existed for 40 years, for violation of the Anti-Trust laws.

The decline in price during the depression was not exceptionally severe. According to BLS figurers, the average 1932 price was 78.9 based on 1929=100. The low of the depression was hit in April, 1933, with a level of 75.3. The decline in furniture prices began in 1920 and cheap and medium priced furniture sold down during the depression to less than one-third of 1920 prices.***

XXII. LUGGAGE AND FANCY LEATHER GOODS INDUSTRY

The principal products of the Leather and Fancy Leather Goods Industry are luggage (suitcases, bags, trunks, etc.,) and leather novelties (billfolds, vanity cases, etc.,)

In 1929 the industry comprised 859 establishments, with aggregate annual production of $99,920,000. By 1933 the number of establishments had fallen to 561 and production value to $35,793,000. This represented a decline in the dollar value of production of approximately 64%.

Some measure of the extent to which prices declined during the depression may be obtained from the index of wholesale prices of traveling bags and of suitcases. Based on 1929, the former index had

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(*) Evidence Study #4, p. 2, NRA files

(**) Interstate Commerce Commission Report, July 28, 1931.

(***) Transcript of Public Hearing, October 9, 1933.

declined to 66.2 in May 1933 and the latter to 67.8 in the same month.*

It is apparent from the statistics quoted that the industry comprised a very considerable number of small establishments. It is probable that the competitive problems encountered were primarily traceable to this condition.

According to claims made by industry members the overhead percentage was fairly high. It was stated that the recognized method of computing costs in the industry was to add 50% of direct cost to allow for overhead and selling expenses.** A few of the larger manufacturers make their own fittings, such as handles, frames, locks, etc. This was said to give them an advantage in cost over the smaller operators who buy all of their fittings.

The record reveals no serious aggravating problems in the industry. The competitive difficulties encountered appear to be traceable primarily to the sharp decline in consumption, to the large number of competing small units, and to the high ratio of overhead to other costs.

XXIII. PAINT, VARNISH AND LACQUER INDUSTRY

Value of production in this industry was about halved during the depression, dropping from $568,976,000 in 1929 to $289,442,000 in 1933. It is significant that value added by manufacture dropped only 42% during the same period, indicating that the price of paint had decreased less rapidly than that of its ingredients.***

The bulk of paint produced is used in the manufacturing and construction industries. In 1929, 41.3% of sales represented sales direct to industrial or other large consumers. The average price during 1932 was 75, based on 1929. The average in 1933 had risen slightly to 77.****

Declining industrial and construction activity, and relative lack of responsiveness of demand to price, appear to have constituted the primary problems with which this industry was confronted.

XXIV. ICE INDUSTRY

Recent trends in the Ice Industry are revealed in the following Table:

(*) Wholesale Prices, BLS

(**) Refer, Public Hearing

(***) Census of Manufacturers, 1929, Vol. I, p. 30 , and Release for 1931 and 1933.

(****) Wholesale Price, B.L.S.

TABLE A XIV

Ice Industry
Number of Establishments and Value of Product, 1929-1933.

Year	Number of Establishments	Value of Product
1929	4110	$210,952
1931	4111	192,027
1933	3329	139,263

Source: Census of Manufacturers, 1929, Vol. II, p, 157-158; Releases for 1931 and 1933. Establishments with products valued at less than $5,000 annually not included.

Sales in 1933 had declined 34% from the 1929 level. In part this was due to the drop in consumer purchasing power, but a more important and more permanent cause was undoubtedly the gradual substitution of mechanical refrigerators for ice boxes.

Capital requirements for entry are low, with the result that the industry is composed of many small units. In 1929, 41.7% of the establishments listed by the Census of Manufacturers did less than $20,000 worth of business and only 12.7% did over $100,000. This does not include plants doing less than $5,000 per annum, of which there were 367 in 1919.*

A considerable proportion of the country's ice output is manufactured by such concerns as breweries, creameries and refrigerated warehouses. These integrated concerns sometimes sell their excess production and thus contribute to disrupting the normal ice market. Competition is, in the main, limited to an area within a radius of a few miles from the producing center. However, the use of trucks, (especially refrigerated trucks), in ice distribution has greatly increased in recent years and has tended to enlarge local areas of competition, making individual localities less dependent on their local producers.

Overhead is so large a part of the total cost as to stimulate attempts to obtain additional business, even at a low price, and thus utilize a greater percentage of capacity. Some idea of the saving obtainable through increasing the percentage capacity utilized it given in a cost study made of a "representative" plant in New Orleans, which showed that a 10% increase in capacity utilization (from 30% to 40%) resulted in only 2.3% increase in cost.

This preponderance of small units naturally precluded any effective organization. Violence and racketeering have been prevalent. No organized control of the market has existed, other than in a few local areas and for very limited periods. Aggravating the problem was a demand relatively unresponsible to change in prices, especially over the short term. Over a longer period price may affect volume, through stimulating or reducing the incentive to purchase mechanical refrigerators; but at any definite time price cuts will do little to increase consumption.

(*) Census of Manufacturers, 1929, Vol. II, p. 78.

XXV. RETAIL RUBBER TIRE AND BATTERY TRADE

The above trade is defined in the code as "the sale or offering for sale to the ultimate consumer and not for resale purposes" of rubber tires, tubes, batteries and accessories.

The tire branch of the Trade only is of significance to this study. This industry and the rubber tire manufacturing industry had many problems in common.

In 1929 tire sales were estimated to have been $764,160,000, gradually decreasing until in 1933 they were $351,770,000. The total number of outlets engaged in retail distribution in 1934, as estimated by the Rubber Division of the Bureau of Foreign and Domestic Commerce, was 183,777, including the following groups:

Independents:	
Dealers	84,000
Sub-dealers	35,000
Jobbers	1,200
Jobbers sub-dealers	20,000
Warehouse dealers	950
Factory owned stores	1,350
Auto supply chains	375
Mail order retail stores	900
Oil company stations	40,000
Mail order houses	2
	183,777

The independent dealers, many of whom were very small, were subjected to constant and increasing competition from factory owned stores, chain stores, mail order houses, and oil company stations. The percentage of the total number of replacement units sold by independent dealers dropped from 91.2% in 1926 to 65.9% in 1933. Furthermore, replacement demand in general had been reduced sharply, in part because of the greater durability of tires.

A considerable spread in wholesale prices to various types of retailers exists. The industry had for several years suffered from price-wars, brought about by efforts of favored distributors to utilize their lower costs to secure a larger share of the business, at the expense of small dealers. These price-wars were primarily on "commercial" business, fleet-owners buying truck tires and sometimes passanger tires in considerable quantity. Commitments for furture purchases at guaranteed low prices were used and discounts ran 8 to 12 "tens" off list.

In the case of consumers or individual owners, other price cutting devices were used; extravagant trade-in allowances on used tires, long time guarantees, etc. Continued attempts were made by committees of sales executives, manufacturers, large and small, and private brand marketers to reach a common ground and understanding, but as quickly as promises were made they were broken.

The price structure of the trade, at the time of code formulation, was in a chaotic condition, due to -

1. subjection of independent dealers to extreme pressure from competition of mail order houses, chain stores, factory outlets, etc.;

2. price unsettlement at the manufacturing end;

3. sharp reduction in sales during depression.

XXVI. RUBBER TIRE MANUFACTURING INDUSTRY

The market for the Rubber Tire Manufacturing Industry may be divided into the supplying of original equipment to automobile manufacturers and the production of replacement units for the vehicle user. The former market may be considered entirely unresponsible to price change, and demand contracted during the depression together with the drop in automobile production. Replacement demand, while more responsive to prices, also dropped sharply; a contributing factor being the longer life of automobile tires.

The effect of the depression on the industry is depicted in the following Table:

TABLE A XV

Rubber Tire Manufacturing Industry
Salient Statistics, 1929 - 1933.

Year	No. of Concerns	Production Thousands of Units	Production Thousands of Dollars	Production Capacity Thousands of Dollars
1929	91	69,765	764,160	960,000
1931	48	48,989	437,964	760,000
1933	40	45,367	351,770	613,671

Source: Survey made by Code Authority; figures in Code History, p. 6, NRA files

The industry has long had an unsatisfactory profit record. Even in 1928 when industry generally showed excellent returns, the tire industry lost $10,896,000 or 0.97% on sales. (*)

In 1927, 40% of all companies reported profits; in 1932 the percentage was reduced to 18%. (**)

Tire prices steadily declined from 1920 until 1933. The lack of uniform sales policy, together with the excess productive capacity of the industry, had produced a price structure which changes from day to day. The result of price policies of manufacturers has been called a "race of discounts". There was no uniform price at any time even for an identical tire.

An important problem resulted from the fact that production and price of the principal raw material, crude rubber, was almost entirely under the control of foreign nations. The wide fluctuations in rubber prices and the differences in buying habits of the manufacturers served to bring about a disparity in raw material costs that was one of the chief factors in the lack of price stability in the industry. Losses

(*) Industry Study, p.77, NRA files

(**) Industry Study, p. 77, NRA files

on inventory during a declining market for crude rubber had frequently been very serious.

Tires were distributed through many distinct channels. Independent dealers, mail order houses, chain stores, department stores, oil company owned stores, and direct factory outlets, all competed. Price cutting by mail order houses constituted an especially serious problem.

"Destructive" price cutting was industry-wide, affecting the marketing of nearly all rubber goods. Trade wars were constant; prices were driven below cost and every price-cutting device was utilized. Small establishments claimed that large manufacturers used their superior resources unfairly to drive them out of business. The field of the small manufacturer had been invaded by large competitors with their "bonus for volume" discount plan. The large manufacturer had also supplemented his distribution scheme, in three cases, by chains of company-owned retail establishments, in direct competition with retailers.

Discord in the industry had prevented any concerted action. There were in the tire field distinctly opposed factions whose differences of methods and objectives aggravated their lack of uniformity in pricing policies. The factional dispute which had received the most publicity was that between manufacturers and mail-order houses. One large manufacturer had waged unremitting and loudly vocal warfare upon all private brand distributors, and upon the iniquity of the arrangements between the mail-order concerns and their suppliers. The diversity of interest between the four large tire manufacturers and the small manufacturers was sharply defined and a source of continual conflict.

XXVII. RETAIL TOBACCO TRADE

The definition of this trade in the code, follows:

> ".....any person engaged wholly or partially, either as an employer or for his own account in the selling of tobacco products directly to the consumer and not for purposes of resale in any form."

In 1929 the total retail tobacco sales were reported to have been $717,637,387. Of this amount chain stores sold almost 20%. The Census of Distribution for 1929 showed approximately 33,000 retail establishments whose principal line was tobacco, employing 34,238 persons.

The Retail Tobacco Dealers of America, Inc., was organized in 1933 and, at that time, claimed to represent a membership of 204,539 stores in which tobacco products were sold at retail.

Approximately 85% of all cigarettes sold in the United States consists of four popular brands - Lucky Strikes (American Tobacco Company), Chesterfields (Liggett & Myers Tobacco Company), Camels (Reynolds Tobacco Company), and Old Golds (P. Lorillard & Company). All four of these brands were highly advertised at the expense of the manufacturer, and consequently, a tremendous demand had grown up for the product among

smokers. As a general rule, smokers purchase their brands almost daily, and therefore are very price conscious. Any variation from a price which might be deemed to be the prevailing price is immediately recorded in the mind of the customer. Department stores, grocery stores and others, not dependent upon the sale of tobacco or cigarettes for their profits, were quick to recognize this fact, and it became a common practice to sell cigarettes at or below cost in order to attract buyers to the store. Certain large retailers were allowed to buy direct from the manufacturers, and were able consequently to offer tobacco products at prices considerably lower than was possible for the retailer who bought less advantageously from the wholesaler.

A price war in cigarettes started in 1931 and reached major proportions in 1933. In some cases retailers, using cigarettes as "loss-leaders", reduced the price of cigarettes to as low as 59¢ a carton, and there were innumerable cases of sales at $1.00 a carton. The cost of a carton to the independent retailer averaged approximately $1.10, so that it was utterly impossible for him to compete on a price basis. Similar, though somewhat less serious problems, existed in the cigar and tobacco fields.

XXVIII. WHOLESALE TOBACCO TRADE

According to the Census of Distribution, the total business done by the Wholesale Tobacco Trade in 1929 reached $1,691,000,000. In 1932 estimated volume had decreased to $1,084,000,000 and the net profit had been reduced from 1.4 to 0.3 percent.

Eighty-four percent of all tobacco products is distributed by tobacco wholesalers, the bulk of the remainder being handled by the grocery and food trade.

Tobacco wholesalers themselves include many categories, such as service jobbers, manufacturers' sales branches, chain stores, warehouses, cash and carry wholesalers, manufacturers' agents, wagon distributors, drop shippers, etc.

The Census of Distribution showed a total of 2,016 wholesalers in 1929, but this figure included only principal line establishments.

The primary problems confronting the wholesale tobacco trade were reflections of the unsettled price structure at the retail end, which has already been described.

The Wholesale Tobacco Trade also resented the encroachment on its field occasioned by direct sales to large retailers and by some of the activities of the sub-jobbers.

XXIX. PAPER DISTRIBUTING TRADE

As defined in the code this trade covers "the business of distribution by 'wholesalers' or distributors' of any or all lines of paper and paper products in the United States, its territories and

possessions, with the incidental processing of such products usual and ordinary in such trades.

In 1934 there were approximately 1,677 merchants scattered throughout the country whose principal line of business was the distribution of paper and paper products. Total sales amounted to $348,540,000. Individual units ranged in size from $20,000 to over $10,000,000. (*)

Approximately 95% of the business consists of the sale of finer grades of paper to be used for printing and in the sale of coarse papers for wrapping purposes. Toilet tissues, paper towels, napkins, plates and other articles sold by retailers account for the other 5% of the total volume. The number of articles carried by paper distributors is especially large and varied. In many instances fine paper houses carry over 4,000 special items and coarse paper houses over 3,000, while many concerns carry both classes.

In addition to the fine and the coarse paper houses and to the concerns handling both types of paper, (so-called "dual houses"), there are a comparatively small number of paper distributors who are classified by the Trade as:

1. Super-jobbers
2. Sub-jobbers
3. Del credere agents.

A "Super-jobber" is a dealer in large lots who purchases from the mills and sells to other wholesalers.

"Sub-jobbers" are, for the most part, one-man concerns which buy from super-jobbers and sell in small quantities to very small merchants to whom they render direct delivery service.

"Del credere agents" act in their own names as mill agents in selling direct to converters or consumers, or assume and guarantee the credit risk.

In the Paper Distributing Trade, sales fall under three general classifications: viz., Warehouse, Direct and Indirect.

A "Warehouse" sale is a sale made by a merchant from the merchant's own stock; or from stock in a public warehouse; or from the stock of a mill operated warehouse; or from another merchant's warehouse stock.

A "Direct" sale is a transaction involving a specific order placed with the manufacturer for mill shipment direct to the merchant's customer or to a designated place of delivery.

(*) Letter from Code Authority to Assistant Deputy Administrator 5/21/35.

An "Indirect Sale" is a transaction involving a specific order, placed with the manufacturer for mill shipment, and handled by the merchant or his agent at some point between the origin of the shipment and place of delivery.

According to a report of a survey conducted by the Business Research Corporation of Chicago, Illinois, the relative volumes of paper products handled under these three classifications during 1934 were as follows:

	Fine Paper Division	Coarse Paper Division
Warehouse Sales	54.55%	63.73%
Direct Sales	30.19%	21.55%
Indirect Sales	15.26%	14.72%

Certain paper products such as paper towels, toilet tissue, etc., are distributed by wholesale grocers in competition with paper distributors.

The major portion of the industry, comprising the large warehouse owning paper distributors, have for a long time maintained a powerful trade association. The National Paper Trades Association, comprised 23 district or territorial groups. In 1934 the total enrollment aggregated 600 concerns, or 41% of the trade. This membership, however, included almost all of the large units and its members accounted for 85% of the 1934 trade volume.

In 1922 the Federal Trade Commission issued a cease and desist order against the Pacific States Paper Trade Association for price fixing activities. The ruling of the Federal Trade Commission was subsequently upheld by the Supreme Court of the United States.

The dominant group in the trade resented the competition of the super-jobbers, the sub-jobbers, and the del credere agents, as well as the inroads of the wholesale grocery trade into the market for certain products. In the first three cases the high overhead costs entailed in operating a partially filled warehouse placed these operators at a disadvantage as compared with members who carried no such burden. In the latter case it was complained that the mark-up charged by the wholesale grocers was substantially lower than the cost of paper distributors. This may have been due, in part, to the fact that wholesale grocers had sustained a comparatively small contraction in their main line operations, so that the joint cost involved in handling paper products was relatively low. In part it may have been due to the use of paper products as loss leaders by the wholesale grocers.

APPENDIX III

Codes in which Mandatory Cost Accounting Systems or Cost Accounting Rules were Approved

1. Mandatory cost systems designed to effectuate cost protection provisions were approved by NRA in the following Industries:

Fertilizer Industry
Hardwood Distillation Industry
Fishing Tackle Industry
Washing and Ironing Machine Manufacturing Industry
Retail Lumber Industry
Throwing Industry
Macaroni Industry
Coffee Industry
Boiler Manufacturing Industry
Malleable Iron Industry
Screw Machine Products Manufacturing Industry
Canvas Goods Industry
Hosiery Industry
Limestone Industry
Cement Industry
Tile Contracting Industry
Gas Appliance and Apparatus Manufacturing Industry
Ready Made Furniture Slip Cover Manufacturing Industry
Fire Extinguisher Appliance Manufacturing Industry
Motor Fire Apparatus Manufacturing Industry
California Sardine Processing Industry
Punch Board Manufacturing Industry
Silverware Manufacturing Industry
Smoking Pipe Manufacturing Industry
Furniture Manufacturing Industry
Cigar Container Industry
Gray Iron Foundry Industry
Automatic Sprinkler Industry
Drop Forging Industry
Earthenware Manufacturing Industry
Merchandise Warehousing Trade
Novelty Curtain, Draperies, Bedspreads and Novelty Pillow Industry
Plumbing Fixtures Industry
Paper Distributing Trade
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Wood Heel Manufacturing Industry
Trucking Industry
Luggage and Fancy Leather Goods Industry.

2. In the following cases, Cost Accounting Systems were approved by the Code Authority only, and not by the Administration:

Compressed Air Industry
Heat Exchange Industry
Pump Manufacturing Industry

Graphic Arts Industries
Commercial Relief Printing Industries
Book Manufacturing Industry
Lithographic Printing Industry
Trade Typesetting Industry
Advertising Typography Industry

Portable Electric Lamp Shade Industry
Electrical Manufacturing Industry

3. Preliminary rules for cost finding, not requiring Administrative approval, were included in the following codes:

Special Tool, Die and Machine Industry
Waxed Paper Industry
Ladder Manufacturing Industry
Set Up Paper Box Industry
Shoe Last Industry
Fabricated Metal Products and Metal Finishing and Metal Coating Industries

4. In two cases preliminary rules for cost finding were prescribed in codes:

Vitrified Clay Sewer Pipe Manufacturing Industry
Marble Quarrying and Finishing Industry.

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION
THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority, the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No. 18, Contents of Code Histories, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the code, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, these materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Economic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
  Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
  Part B - Section 3 (e) of NIRA and its administration.
  Part C - Imports and Importing under NRA Codes.
  Part D - Exports and Exporting under NRA Codes.
Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on

Women's Apparel Industry, Some Aspects of the

Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: Trade Practice Provisions in Selected NRA Codes
Distributive Relations in the Asbestos Industry
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control in the Ice Industry
Production Control, Case Studies in
Resale Price Maintenance Legislation in the United States
Retail Price Cutting, Restriction of, with special Emphasis on The Drug Industry.
Trade Practice Rules of The Federal Trade Commission (1914-1936): A classification for comparison with Trade Practice Provisions of NRA Codes.

Labor Studies

Cap and Cloth Hat Industry, Commission Report on Wage Differentials in
Earnings in Selected Manufacturing Industries, by States, 1933-35
Employment, Payrolls, Hours, and Wages in 115 Selected Code Industries 1933-1935
Fur Manufacturing, Commission Report on Wages and Hours in
Hours and Wages in American Industry
Labor Program Under the National Industrial Recovery Act, The
  Part A. Introduction
  Part B. Control of Hours and Reemployment
  Part C. Control of Wages
  Part D. Control of Other Conditions of Employment
  Part E. Section 7(a) of the Recovery Act
Materials in the Field of Industrial Relations
PRA Census of Employment, June, October, 1933
Puerto Rico Needlework, Homeworkers Survey

Administrative Studies

Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval
Administrative Interpretations of NRA Codes
Administrative Law and Procedure under the NIRA
Agreements Under Sections 4(a) and 7(b) of the NIRA
Approve Codes in Industry Groups, Classification of
Basic Code, the -- (Administrative Order X-61)
Code Authorities and Their Part in the Administration of the NIRA
  Part A. Introduction
  Part B. Nature, Composition and Organization of Code Authorities

Part C. Activities of the Code Authorities
Part D. Code Authority Finances
Part E. Summary and Evaluation
Code Compliance Activities of the NRA
Code Making Program of the NRA in the Territories, The
Code Provisions and Related Subjects, Policy Statements Concerning
Content of NIRA Administrative Legislation
Part A. Executive and Administrative Orders
Part B. Labor Provisions in the Codes
Part C. Trade Practice Provisions in the Codes
Part D. Administrative Provisions in the Codes
Part E. Agreements under Sections 4(a) and 7(b)
Part F. A Type Case: The Cotton Textile Code
Labels Under NRA, A Study of
Model Code and Model Provisions for Codes, Development of
National Recovery Administration, The: A Review of its Organization and Activities
NRA Insignia
President's Reemployment Agreement, The
President's Reemployment Agreement, Substitutions in Connection with the
Prison Labor Problem under NRA and the Prison Compact, The
Problems of Administration in the Overlapping of Code Definitions of Industries and Trades, Multiple Code Coverage, Classifying Individual Members of Industries and Trades
Relationship of NRA to Government Contracts and Contracts Involving the Use of Government Funds
Relationship of NRA with States and Municipalities
Sheltered Workshops Under NRA
Uncodified Industries: A Study of Factors Limiting the Code Making Program

Legal Studies

Anti-Trust Laws and Unfair Competition
Collective Bargaining Agreements, the Right of Individual Employees to Enforce
Commerce Clause, Federal Regulation of the Employer-Employee Relationship Under the
Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial Regulatory Legislation
Enforcement, Extra-Judicial Methods of
Federal Regulation through the Joint Employment of the Power of Taxation and the Spending Power
Government Contract Provisions as a Means of Establishing Proper Economic Standards, Legal Memorandum on Possibility of
Industrial Relations in Australia, Regulation of
Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Commerce Clause, Cases on
Legislative Possibilities of the State Constitutions
Post Office and Post Road Power -- Can it be Used as a Means of Federal Industrial Regulation?
State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
Trade Practices and the Anti-Trust Laws
Treaty Making Power of the United States
War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of these studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
9768—5.

Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

L. C. Marshall,
Director, Division of Review.

9768—6.